TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 365

DR. A. W. BOYD, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 16, 1936

CERTIORARI GRANTED MAY 11, 1936

(31,040)

(31,040)

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INDEX

	Original	Print
Record from the district court of the United States, eastern district of Tennessee	1	1
Indictment	1	1
Plea of not guilty and order setting cause	14	11
Minute entries	14	12
Verdict	15	12
Order overruling motion for a new trial and sentence	16	13
Bill of exceptions	17	13
Caption	17	13
Appearances of counsel	17	14
Testimony of C. R. Frazier	17	14
R. F. Park	22	18
Ira L. Hennessee	24	19
Clyde Cox	24	20
R. F. Park (recalled)	28	23
P. C. Day	30	24
S. R. Miller	30	25
Annie Davis	31	25
George O'Neal	33	27

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	Original	Print
Testimony of Frank O'Hara	38	31
Dr. J. B. Steele	41	33
Dr. L. C. Williamson	46	37
Stella McRay	51	42
James Pinson	52	43
Dr. A. W. Boyd	55	45
Dr. Cooper Holtzclaw	73	59
W. B. Speer	80	65
W. M. Nixon	80	65
W. J. Poe	81	66
J. J. Tucker	81	66
J. H. Taylor	81	66
Roy Emery	82	67
Sid Ellington	82	67
Jake Foster	84	69
Frank Elkins	86	70
Dr. Victor Williams	87	71
G. A. Thompson	88	72
Earl Garnell	90	73
Dr. L. C. Williamson (recalled)	91	74
Dr. E. R. Hochstetter, Jr.	93	75
Dr. L. C. Williamson (recalled)	94	77
O. W. Boyd	96	78
Dr. W. A. McManus	96	78
Sid Ellington (recalled)	98	80
Charge of court to jury	100	81
Motion for a new trial	109	88
Minute entries	110	89
Order settling bill of exceptions	111	90
Petition for writ of error	111	90
Writ of error	113	91
Assignment of errors	114	92
Prayer for reversal	115	93
Order re bail	115	93
Citation and service (omitted in printing)	116	93
Bond on appeal (omitted in printing)	117	93
Orders extending time	118	93
Praecipe for transcript of record	119	94
Clerk's certificate	120	95
Proceedings in United States circuit court of appeals, sixth circuit	121	95
Appearance of counsel	121	95
Argument and submission	121	95
Judgment	122	95
Opinion per curiam	123	96
Motion to stay mandate	124	96
Clerk's certificate	125	97
Order allowing certiorari	126	97

[fol. 1] **IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DIVISION OF THE EASTERN DISTRICT OF TENNESSEE**

No. 4245

A. W. Boyd, Plaintiff in Error,

vs.

United States of America, Defendant in Error

Indictment—Filed November 14, 1923

First Count

The Grand Jurors of the United States, duly selected, impaneled, sworn and charged to inquire for the body of the Southern Division of the Eastern District of Tennessee, at the November Term, 1923, of the District Court thereof, on their oaths do find, charge and present that A. W. Boyd, (hereinafter referred to as the defendant) in Hamilton County, Tennessee, and within the jurisdiction of this Court, having on and between May 1st, 1923, and September 9th, 1923, bartered, sold, dispensed, exchanged and given away to divers persons unknown to the Grand Jurors aforesaid, and whose names cannot be ascertained on diligent inquiry, various quantities and amounts of opium and coca leaves, and compounds, manufacturers, salts, derivatives and preparations thereof, hereafter, to-wit, between May 1st, 1923, and September 9th, 1923, knowingly, wilfully and feloniously failed to enter and keep a full true and correct record of the said bartering, selling, dispensing, exchanging and giving away of said drugs, in a well bound book or other record, showing the amount dispensed or distributed, the date thereof, together with the name and address of the purchasers aforesaid, to whom such drug was then and there sold, dispensed, bartered, exchanged and given away, and to thereafter preserve and keep such record [fol. 2] for a period of two years, the said A. W. Boyd then and there being a duly licensed and practicing physician and registered with the Internal Revenue Collecter for the District of Tennessee, as required by an Act of Congress approved December 17, 1914, gnerally known as the Harrison Anti-Narcotic Act; contrary to the form of the statutes in such case made and provided and against the peace and dignity of the United States.

Second Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present; that in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 13th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs,

specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Annie Davis a quantity of a narcotic drug, to-wit: 40 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Annie Davis on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Annie Davis a certain prescription, in the following words and figures, to-wit:

"Aug. 13, 1923.

For: Annie Davis, 4041 Cherry St., Age 38 years, Addict for 21 years, Incurable senility, Morphine Sulphate 40 grs. Sig. As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by the retail dealer in opium, morphine, cocaine and other narcotic drugs, under the provisions of the Act [fol. 3] aforesaid, and which said prescription was filled by Hennessee Bros. Pharmacy, a retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Annie Davis, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Third Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 2nd day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Annie Davis a quantity of a narcotic drug, to-wit: 48 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, ex-

changing, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Annie Davis on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Annie Davis a certain prescription, in the following words and figures, to-wit:

"Aug. 2, 1923.

For: Annie Davis, 4041 Cherry St., Age 38 years. Addict for 21 years. Incurable senility, Morphine Sulphate, 48 grs. Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Hennessee Bros., [fol. 4] Pharmacy a retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Annie Davis, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Fourth Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 9th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Annie Davis a quantity of a narcotic drug, to-wit: 48 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Annie Davis on a form isued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Annie Davis a certain prescription, in the following words and figures, to-wit:

"Aug. 9, 1923.

For: Annie Davis, 4041 Cherry St., Age 38 years. Addict for 21 years. Incurable senility, Morphine Sulphate, 48 grs. Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Hennessee Bros., Pharmacy, a retail dealer as aforesaid, and the narcotics called for [fol. 5] therein placed in the possession of the aforesaid Annie Davis, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Fifth Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 7th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collectors of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Russell Goodman a quantity of a narcotic drug, to-wit: 24 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Russell Goodman on a form issued in blank for that purpose by the Commisisoner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Russell Goodman a certain prescription, in the following words and figures, to-wit:

"Aug. 7, 1923.

For: Russell Goodman, 400 W. 1st St., Age 50 years, addict 13 years, Incurable Cardiac Asthma, Morphine Sulphate, 24 grs. Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional prac-

tice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a retail dealer as aforesaid, and the narcotics called for [fol. 6] therein placed in the possession of the aforesaid Russell Goodman, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Sixth Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 11th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Russell Goodman a quantity of a narcotic drug, to-wit: 24 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Russell Goodman on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in the manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Russell Goodman a certain prescription, in the following words and figures, to-wit:

"Aug. 11, 1923.

For: Russell Goodman 400 W. 1st St., Age 50 years, addict 13 years. Incurable Cardiac Asthma. Morphine Sulphate, 24 grs. Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a [fol. 7] retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Russell Goodman, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Seventh Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 15th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Russell Goodman a quantity of a narcotic drug, to-wit: 24 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Russell Goodman on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Russell Goodman a certain prescription, in the following words and figures, to-wit:

"Aug. 15, 1923.

For: Russell Goodman 400 W. 1st St., Age 50 years, addict 13 years. Incurable Cardiac Asthma, Morphine Sulphate, 24 grs. Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a [fol. 8] retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Russell Goodman, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Eighth Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 23rd day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Col-

lector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Geo. O'Neil, a quantity of a narcotic drug, to-wit: 24 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Geo. O'Neil, on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Geo. O'Neil a certain prescription, in the following words and figures, to-wit:

"Aug. 23, 1923.

For: Geo. O'Neil, Clifton Hotel, Age 34 years, Addicted 8 years, Incurable Osteo Myeletis, Morphine Sulphate 24 grains, Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a retail dealer as aforesaid, and the narcotics called for therein placed [fol. 9] in the possession of the aforesaid Geo. O'Neil, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Ninth Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 26th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Geo. O'Neil a quantity of a narcotic drug, to-wit: 24 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, depensing and giving away of the aforesaid morphine sulphate not being in pur-

suance of a written order of the said Geo. O'Neil on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Geo. O'Neil a certain prescription, in the following words and figures, to-wit:

"Aug. 26, 1923.

For: Geo. O'Neil, Clifton Hotel, Age 34 years, Addicted 8 years. Incurable Osteo Myeletis, Morphine Sulphate 24 grains, Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine, and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Geo. O'Neil, as then and [fol. 10] there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Tenth Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 29th day of Aug. 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Geo. O'Neil a quantity of narcotic drug, to-wit 24 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Geo. O'Neil on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Geo. O'Neil a certain prescription, in the following words and figures, to-wit:

"Aug. 29, 1923.

For: Geo. O'Neil, Clifton Hotel, Age 34 years, Addicted 8 years. Incurable Osteo Myeletis, Morphine Sulphate 24 grains, Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine, and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforsaid Geo. O'Neil, as then and therein intended by said A. W. Boyd, contrary to the form of [fol. 11] the statute in such case made and provided and against the peace and dignity of the United States.

Eleventh Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 18th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully, and feloniously barter, sell, dispense, exchange and give away to one Frank O'Hara a quantity of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Frank O'Hara on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Frank O'Hara a certain prescription, in the following words and figures, to-wit:

"Aug. 18, 1923.

For: Frank O'Hara, 901 King St., Age 40 years, Addicted 18 years. Incurable Neuritis Luters, Morphine Sulphate, 30 grains, Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said pre-

scription would be filled by a retail dealer in opium, morphine, cocaine, and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Frank O'Hara, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

[fol. 12] Twelfth Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 24th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser *in* opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Frank O'Hara a quantity of a narcotic drug, to-wit 30 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Frank O'Harra on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Frank O'Hara a certain prescription, in the following words and figures, to-wit:

"Aug. 24, 1923.

For: Frank O'Hara, 901 King St., Age 40 years, Addicted 18 years. Incurable Neuritis Luters, Morphine Sulphate, 30 grains, Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine, and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Frank O'Hara, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

[fol. 13] Thirteenth Count

The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present: That in Hamilton County, Tennessee, and within the jurisdiction of this Court, on the 30th day of August, 1923, A. W. Boyd who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Frank O'Hara a quantity of a narcotic drug, to-wit: 30 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate not being in pursuance of a written order of the said Frank O'Hara on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, in manner following, to-wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said —— —— a certain prescription, in the following words and figures, to-wit:

"Aug. 30, 1923.

For: Frank O'Hara, 901 King St., Age 40 years, Addicted 18 years. Incurable Neuritis Luters, Morphine Sulphate, 30 grains, Sig: As directed.

(Signed) A. W. Boyd."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd not in the course of his professional practice only, the said A. W. Boyd intending and believing that said prescription would be filled by a retail dealer in opium, morphine, cocaine and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Read House Pharmacy, a retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Frank O'Hara, as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Geo. C. Taylor, U. S. Attorney.

[fol. 14] In United States District Court

Plea of Not Guilty and Order Setting Cause—April 28th, 1924

Came the United States Attorney and came the defendant in proper person, who, upon being arraigned for plea says that he is not

guilty in manner and form as charged in the Indictment and of this he puts himself upon the country and the District Attorney doth the like. Whereupon it is ordered that this case be set upon the calendar for hearing.

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—June 17, 1924

Came the United States Attorney and came the defendant in proper person, and the case coming on for hearing upon the plea of not guilty made by the defendant and joinder therein by the District Attorney, came the following jury to-wit: Geo. W. Humphreys, P. W. DeLaney, M. T. Fouts, W. H. Stapleton, W. A. Ware, E. E. Betts, Mart Webb, H. L. Shambliss, Perry Jones, Tom Haboney, P. R. Wilhoit and Jno. Childress, good and lawful men, citizens and freeholders of the Southern Division of the Eastern District of Tennessee, and who having heard part of the testimony, but not all of the same and the hour of adjournment having arrived, are respited until tomorrow morning at nine o'clock.

[fol. 15] MINUTE ENTRY—June 18th, 1924

Came the United States Attorney and came the defendant in proper person, and came also the same jury as upon yesterday, who having heard part of the testimony, but not all of same and the hour of adjournment having arrived are respited until tomorrow morning at nine o'clock.

MINUTE ENTRY—June 19th, 1924

Came the United States Attorney and came the defendant in proper person, and came also the same jury as upon yesterday, who having heard the remainder of the testimony, the argument of counsel but not the charge of the Court, and the hour of adjournment having arrived, are respited until tomorrow morning at nine o'clock.

IN UNITED STATES DISTRICT COURT

VERDICT—June 20th, 1924

Came the United States Attorney and came the defendant in proper person, and came also the same jury as upon yesterday, who having received the charge of the Court, upon their oaths do say, by direction of the Court, they find the defendant not guilty as charged

[fol. 16] in First Count of the Indictment, but they find the defendant guilty as charged in the Second, Third, Fourth, Eleventh, and Thirteenth Counts of the Indictment, that they are unable to agree upon a verdict as to the Fifth, Sixth, Seventh, Eight, Ninth, and Tenth Counts of the Indictment, and thereupon came the United States Attorney, who, with leave of the Court, entered a nolle prosequi as to said Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Counts of the said Indictment. Whereupon it is ordered by the Court that the defendant go hence as to said counts. And came the defendant by his attorney and moved the Court for a new trial in this case as to said verdict of guilty, the hearing of said motion is fixed for July 3rd, 1924.

In United States District Court

Order Overruling Motion for New Trial and Sentence—July 24th, 1924

Came the District Attorney and the defendant in person and by counsel and the case coming on to be heard upon the motion for a new trial and having heard argument thereon, the Court upon consideration thereof is pleased to and does overrule the same. It is thereupon ordered and adjudged that said motion for a new trial be and the same is overruled and that the defendant A. W. Boyd for such offenses as found and in accord with the verdict of the jury will be confined in the United States Penitentiary at Atlanta, Georgia for a period of two years upon each of said counts, 2, 3, 4, 11, 12, and 13 of the Indictment and that in addition thereto he pay a fine of $200, upon each of said counts and the costs of the cause for which execution may issue. The sentences of imprisonment above imposed upon each count of said indictment will run concurrently with each other.

[fol. 17] In United States District Court

Bill of Exceptions—Filed Sept. 19, 1924

Caption

Be It Remembered that at a District Court for the Eastern District of Tennessee, Southern Division, the Honorable Xen Hicks, District Judge, presided, the following were all the proceedings had and testimony introduced in the above entitled cause on June 17th, 18th, 19th and 20th, 1924.

[Title omitted]

This cause came on to be heard before the Honorable Xen Hicks, Judge, and a jury on June 17, 1924, when the following proceedings were had, to-wit:

Appearances of Counsel

Geo. C. Taylor, United States Attorney.

M. N. Whitaker and Lon Foust of Chattanooga, Tennessee, for defendant.

The indictment was read. It was agreed that the defendant was a licensed physician registered under the Act.

C. R. FRAZIER, a witness for the Government.

Direct examination by Mr. Taylor:

My name is C. R. Frazier, narcotic agent, Treasury Department. I have been narcotic agent since January 1, 1919. The duties of a narotic agent are the inspection of narcotic files of druggists, physicians and other persons registered under the law, and the investigation of violations occurring under the Harrison Narcotic Law. In such capacity of narcotic agent I made an attempt to investigate the records of the defendant showing the disposition of narcotics made by him. I visited him in September, 1923. His office was on the corner of, I believe it is Sixth; it is in a brick building right on the corner of Sixth and Market Street-, or Broad Street, Chattanooga, one street beyond Broad Street. I saw the dedefendant on that occasion. He was in his office. It was day time. Narcotic Agent F. E. Hill accompanied me there. Mr. Hill is as- [fol. 18] signed to duty in the Texas Division. He is still in the service of the United States. I was senior by reason of service. By reason of that seniority I took charge of the investigation and made the report of the result. Prior to beginning our inspection or examination of the records of the defendant we asked him for his duplicate order forms. Under the law a person who is registered as a practitioner or as a dealer secures his drug for his practice or for sale in his retail business or wholesale business on order forms which are issued in blank for that purpose by the Commissioner of Internal Revenue, and distributed by the Collector in each collection district, which happens to be in Tennessee at Nashville, the collector of Internal Revenue at Nashville issues the order forms which are filled out by the person registered. Each order form is issued in the name of the person to whom it is issued. At the present time the name of the person to whom the order form is issued is stamped in with an embossing machine and at the time of this they were written in. I think the balance was stamped in. I saw the duplicates of these particular order forms he had on file. The duplicates are marked with a serial number as well. They come in books of ten, and in addition to the registrant's register number, each order form bears a serial number from one to ten in each book, that is, if it is Y 763,941 to 950, it would be. No two order forms bear the same initial and number. They are printed. The purpose of the serial number is so that there will be no repetition or duplication of

the order forms. There is no other way whereby morphine or a derivative of opium may be purchased by a registered person or other person except on one of these order forms, that is, any person who is classed as entitled to deal in morphine, a doctor, veterinary or dentist. He stated that he had moved recently, moved to this place, and that he only had part of his order forms. He produced his order forms from May 1, 1923, or about May 1st, to the date of my inspection, which was, I think, some time about the 9th of September, as I recall. I made a memorandum at the time; it is in my report. The report I have written and signed is the exact date. The investigation was made on September 9th, and covered the period from May 4, 1923, to September 9, 1923. I have forgotten the exact number of books of ten duplicate order forms the defendant produced covering that period, but I think it was about five. The report does not show that. The order forms speak for themselves. When an original order form is executed by a physician and morphine furnished [fol. 19] on it, it is filled by the wholesale druggist, and is kept on file for a period of two years by the wholesaler. The wholesalers who filled the order forms which were executed by the defendant are under subpœna and some of them are here. Five books would contain fifty blanks. After adding up the total of his purchases, I then asked him for a record showing the dispensation of this drug. It showed the purchase of 35,500 half grain morphine tablets, or 17,750 grains of morphine, in the period from May 4, 1923, to September 9, 1923. I then asked him for his dispensation record, that is, the record showing what dispensations had been made of the morphine. He only had a very small quantity on hand, just a few tablets on hand at that time. I do not find the exact figures right here. My best recollection is that he had just a part of a bottle in which originally was contained 100 half grain tablets. I don't recall the exact amount. That would have been, if full, 50 grains. I asked him to show me his dispensation record, that is, the record indicating the names of the persons of the patients and their addresses and the date and the amount of drug dispensed to each person to whom the drug had been dispensed. He stated that he had no record, that he had kept no record at all. He said he had personally administered morphine in his office, and that he had not given any morphine away from his office and that all the morphine, in other words, dispensed by him, had been dispensed in his office and not away from his office, and he understood he did not have to keep a record under those circumstances. He gave me the names of persons to whom such dispensations had been made. I asked him particularly about how he was able to keep up with his patients if he did not keep a record, how he could tell how much each patient required each day and of each dose, and he stated that he could tell that right off hand. I then asked him to give me the names of some of the persons to whom he had issued morphine and the amounts prescribed on each occasion in order to prove his contention that he could recall each instance and each dispensation. He did give the names of about four patients, I think it was. He stated to me that his usual number ran somewhere between 18 and 20 patients

on his list most of the time, but that at that time he only gave me the names of James Pinson was one and Robert Harlow was another. I believe he mentioned Clyde Cox. Both Pinson and Harlow were in the office then. He gave me their names. I recall Clyde Cox. He mentioned Clyde Cox. As a matter of fact I asked him to write me down a list of those patients and he started in and wrote about [fol. 20] four of the names down, and then when I asked him to give me that list he became very angry and didn't want me to take the list at all. He had four names on it, as I recall. He stated that he had been giving about three grains three times a day to James Pinson and about the same quantity to Robert Harlow. I don't recall he gave me the amount as to Clyde Cox. He stated he was dispensing to about twenty patients, approximately. I made a report at the time. He stated that he had something like 25 or 30 patients that is at that time. I don't recall the number. He claimed that some of them he was curing for drug addiction, some were old and incurable and could not be treated, and some of them young people that came to his office, and that all of his patients came to his office every day for their regular administration, some of them coming as much as three times a day for their drug. By reason of information given by the defendant I made an inspection of drug stores to locate any prescriptions.

Q. State what the result of that inspection was?

A. I have my complete compilation there of the different prescriptions. It shows the total number of prescriptions and the amount to each patient. I made particular investigation regarding the——

General Whitaker: I believe I want to lodge an objection as to the introduction of those prescriptions except the ones stated in the indictment.

The Court: I overrule that. I think others are competent. That is under the case of Hughes and the case of Hope.

The Witness: In particular reference to those mentioned in the indictment is Annie Davis. I know Annie Davis. She is a witness here. I found these prescriptions on file at the Hennessee Brothers Drug Co. down on Main Street, at the far end of Market, and the total prescriptions found, I think from July 2nd to August 19th. That is within the period from May 4th to September 23rd covered by my inspection, July and August, 1923, covered by the inspection. I found on file a total of nine prescriptions calling for 344 grains of morphine. Those prescriptions called each for 40 grains for July 2, 12, 17, 22 and August 13, and 48 grains on August 2 and 9 and then August 19, eight grains. They are to Annie Davis, nine prescriptions. I found twelve prescriptions issued to Russell Goodman, 400 West First Street, Chattanooga, age 50, 13 years addict, cardiac [fol. 21] Asthma, which were filled at the Read House Drug Store, issued by Dr. Boyd, 12 of those prescriptions. August 7, 24 grain prescription; August 11th, 24 grain prescription; August 15th, 24 grain prescription. Those are referred to in the 5th, 6th and 7th counts of the indictment. I found nine prescriptions, totalling 232 grains from August 3rd to August 29th, inclusive, for George O'Neal,

one on the 23rd for 24 grains; 26th for 24 grains; 29th for 24 grains. I found a total of 12 prescriptions totalling 360 grains from July 1st to August 30, 1923, for Frank O'Hara. August 18th, 30 grains, August 24th, 30 grains and August 30th, 30 grains, are the eleventh, twelfth and thirteenth counts in the indictment. Frank O'Hara is a witness here. He is an addict and was then. George O'Neal is an addict. Russell Goodman is now in the Federal penitentiary at Atlanta. He was an addict. There was no record in the office of the defendant showing any dispensation of morphine to either of the persons named in the indictment corresponding with the quantities indicated by the prescriptions which I have read.

Cross-examination by General Whitaker:

He told me there was no record in his office corresponding to those. I took his word for it. He stated he had no record at all in no case. He stated that he administered all morphine in his office. I went to his office on September 9th, according to my report and that is my recollection about that time. His office at that time was on the corner of Seventh and Chestnut Streets. I could not think of the name of the street awhile ago. He stated to me that he had moved a short time prior to that. There had been issued to Dr. Boyd some order forms. I cannot say as to the exact number. I have no record on that. I stated it was my recollection that he had about five books in his office at the time I made the inspection, five books of ten each. I do not know how many he had originally issued to him. That would be a matter which the collector would have a record. They were duplicates showing the purchase. Dr. Boyd told me that he had a remedy, he thought, for the relief and possibly the cure of these addicts. He told me that was his purpose in administering this narcotic drug. He told me that he had relieved some of them. He told be that he had in process of relief many others, some of them he had reduced all the way from thirty-five or forty grains down to half a grain. He just wrote down four names when I was in his office. He stated that at that time he had between twenty-five and thirty addict patients. He stated that his [fol. 22] effort and purpose was to try to relieve them from the disease or habit. He told me that one of his patients was James Pinson. I talked to some of these patients he told me about. I went to see James Pinson. I didn't talk to him at his home. I talked to him in Dr. Boyd's office and later I met him on the street and talked to him. I don't know that Pinson was a world war soldier and had been gassed in France. He told me that. I don't know. He told me so himself. Narcotic Agent F. E. Hill was my assistant in making these inspections at the time I inspected Dr. Boyd. He is now working out of the El Paso, Texas Division. He and I were present there at the time we talked to Pinson. We talked to Pinson there in the office. I don't recall ever cussing him out. I thought that he was trying to shield Dr. Boyd, and for that reason I told him that we didn't expect anything but the truth from him.

I did not abuse him. He did not tell me where to get off. My talk with him was not particularly unpleasant. It may be that the other man did. I don't know about that. I told him frankly that I thought he was not telling me the truth. I conduct myself in as gentlemanly a manner as I can possibly at all times. I think that an officer above all other men should be a gentleman, and that is my attitude and that is my practice.

R. F. PARK, a witness for the Government:

Direct examination by Mr. Taylor:

I am drug clerk at the Read House Pharmacy. I am pharmacist. I have the prescriptions called for in the subpœna in this case against Dr. A. W. Boyd showing the dispensation of morphine made on prescriptions issued by him, Frank O'Hara, Russell Goodman and George O'Neal. Frank O'Hara, 317 Chestnut, age 42, addict 16 years, T. B., incurable, morphine sulphate, grains 30, use only for relief. Dr. A. W. Boyd; registration number; 8/5/23. Frank O'Hara, 317 Cherry Street, age 40, addict 16 years, syphilis and rheumatism, incurable, morphine sulphate, grains 30, use only for relief. A. W. Boyd, 8/17/23. Frank O'Hara, 417 Cherry Street, age 42 addict 16 years, T. B. and syphilitic rheumatism, incurable, morphine sulphate, grains 24, use only for relief. A. W. Boyd 9/30/23. (Prescriptions filed as plaintiff's exhibits 1, 2, 3 and 4). Russell Goodman, 808 Hill Street, age 38, addict 15 years, asthma, morphine sulphate, grains 24. Use only for relief; 8/2/23. It is Goodwin, as I know him. Age 38, addict 15 years, asthma, in- [fol. 23] curable, morphine sulphate, grains 24, use only for relief. A. W. Boyd, 8/6/23. Russell Goodwin, 808 Hill Street, age 38, addict 15 years, asthma incurable, morphine sulphate, grains 24, use only for relief. A. W. Boyd, 8/10/23. Russell Goodwin, 808 Hill Street, age 38, asthma incurable, morphine sulphate, grains, 24, use for relief only, 8/24/23. (Foregoing prescriptions filed as plaintiff's exhibits 5, 6, 7 and 8).

(Objection was made by counsel for defendant to the foregoing prescriptions as not being named in the indictment, and particularly to those under the name of Russell Goodwin, objection being made that the prescriptions set forth in the indictment were in the name of Russell Goodman, which objections were overruled by the court.)

The Witness: George O'Neal, Clifton Hotel, 34, addict nine years, T. B. bones, incurable, morphine sulphate, grains 24; use only for relief. A. W. Boyd, 8/16/23. George O'Neal, Clifton Hotel, age 34, addict 9 years, T. B. of bones, incurable, morphine sulphate, grains 24. Use only for relief. A. W. Boyd, 8/23/23. George O'Neal, Clifton Hotel, 34, addict 9 years, T. B. incurable, morphine sulphate, 24 grains, use only for relief. A. W. Boyd, 8/10/23. George O'Neal,

Clifton Hotel, 34, addict 9 years, T. B. of bones, incurable, morphine sulphate, grains 32. Use only for relief. A. W. Boyd, 8/6/23. George O'Neal, Clifton Hotel, 34, addict 9 years, T. B. bones, incurable, morphine sulphate, grains 32, use only for relief. A. W. Boyd, 8/3/23. All the prescriptions on file in my store were written by Dr. Boyd for the patients named during the date that the subpœna specifies. I have not the subpœna. It is at the store.

Cross-examination by General Whitaker:

I am not one of the proprietors of the Read House Drug Store. I am the prescription clerk. I had no prescriptions there issued to Annie Davis. I filled some prescriptions for Russell Goodman.

Q. I will ask you if these prescriptions that you filed in your original testimony that were given by the defendant Dr. Boyd to the different parties, if they did not present you prior to that time or during that time their cards signed by Dr. Hochstetter as county physician that they were addicts and had to have it for the purpose of relieving pain incident to their affliction?

(Objection was made to the foregoing question, which objection was sustained by the court, to which the defendant noted an exception, and permission granted by the court to show the answer later.)

[fol. 24] Ira L. Hennessee, a witness for the Government:

Direct examination by Mr. Taylor:

My name is Ira L. Hennessee. I am interested in the Hennessee Brothers Pharmacy in Chattanooga. I have four prescriptions filled in August for Annie Davis written by Dr. Boyd. Annie Davis, 1421 Cherry Street, age 36, addict 22 years, asthmatic heart. Morphine sulphate, grains 40, incurable. August 2, 1923. I believe it is 48 grains. The next one is on August 9th, age 36, addict 21 years, asthma incurable, 48 grains, by Dr. Boyd. August 13th, 40 grains, asthma, addicted twenty-one years. (Filed as plaintiff's exhibits 14 to 17, inclusive.) I thought I knew Annie Davis, but I am not sure now. I did know her at that time. They came in the store pretty often. I don't believe I would know her now. She came in person when she got her prescriptions filled.

(Defendant's counsel requested that the record show that the witness was asked the same question as witness Park with reference to cards issued by the county physician and what his answer would be, which was allowed by the court.)

CLYDE COX, a witness for the Government:

Direct examination by Mr. Taylor:

My name is Clyde Cox, I live on Lindsay Street, and have been living there about nine years. I am addicted to the use of morphine and have been so addicted about fifteen years. I have never been cured of it. I have been to a sanitorium but never been completely off. I went to a sanitorium in Atlanta. I was there about four years ago. I have had syphilis, and I have neuritis, and nervousness. I don't know what the nervousness is due to. I have had it about twenty years. I got hurt and have been that way ever since. When I was hurt I commenced taking morphine. I was hurt about fifteen years ago. I was living here between May and September of last year. I was then addicted to the use of morphine. I am an automobile mechanic. I worked up until about a year ago, and I got down with blood poisoning, lost about fifty or sixty pounds in weight, got down to where I couldn't do anything. That was last year, about along in the fall sometime. I don't think it was later than September. I don't remember the month. It was sometime during the summer of last year. Dr. Boyd waited on me [fol. 25] when I had blood poisoning. He gave me medicine for the blood poisoning, vaccine or serum treatment and cut my arm open. The blood poisoning was from cocaine injection, I think. That is, where I use the needle in the injection. I suppose it was one of the needle marks that became infected. That condition lasted for a month or more, maybe. It was several months before I got able to get around. It was somewhere along in June. During that time Dr. Boyd was prescribing for me. In addition to prescriptions he gave me personal administrations of morphine. I had to have a card and I didn't have a card. He didn't give me the prescriptions the same time he was administering. When he gave me the prescriptions I used the prescriptions. The prescriptions were given to me after he gave me the dispensations. There was only a few prescriptions that I got, eight or ten. Those prescriptions were for about thirty grains, I think. That lasted me four or five days. When I got the prescriptions I visited the office. I did not get personal administrations when I got the prescriptions. I got a prescription every four or five days. I was not getting morphine any place else. When I was getting the administrations I went there twice a day. I don't know just exactly what he gave me. When I first went I was taking a large amount. I am still taking morphine. I am getting it now from Dr. Boyd. He is giving it to me himself in the office. I don't know what quantity I am taking now. I am still a morphine addict. I am a wreck without it. I suffer. I hurt all over. It causes looseness of the bowels when I don't have it. After the morphine has been withdrawn from me I have the symptom of bowel looseness in from twenty-four to thirty-six hours. I have had diarrhea. At times I have not had enough morphine to keep me comfortable, numerous times. When I get

in that condition I go to the doctor. I would go to Dr. Boyd. He would give me medicine. I don't know what it was, he would give me injections. That would relieve my pain. He gave me different kinds of medicine. Dr. Boyd had me at his home, kept me there for treatment. I didn't do anything while I was there except drive his car. I am a mechanic. I looked after the upkeep of his car some. I stayed at his home about two months. He did not pay me any wages for looking after his car. He gave me treatment. He did not absolutely cure me from the addiction. I was there about sixty days. I have been his patient about eight months and am now his patient. When I stayed at his house I slept there and ate there. I was under his constant observation and control. I don't [fol. 26] hardly think he entirely withdrew the morphine from me during that period. It was along in the late fall when I was there, sometime about six months ago. I left there because my wife came back; she was away and she came back and then I got down sick with chills and fever and I went with my wife to the room. During the time I was down with chills and fever I was getting my morphine from Dr. Boyd. He would come to me. I was in bed off and on for about a month or more. He did not give me prescriptions during that time, but personal administrations. In July and August I was in Chattanooga. Dr. Boyd was here. During that period I suppose I was being treated by Dr. Boyd for drug addiction. I don't really know just what time he did give the prescriptions. I don't remember the month that I got the prescriptions. After he stopped writing prescriptions and commenced personal administrations he did not write prescriptions again. He kept up the personal administrations. He gave me eight or ten prescriptions, thirty or forty grains. I suppose in May and June he was giving me personal injections. The five prescriptions dated July 3, 1923, July 6, 1923, July 9, 1923, July 13, 1923, July 26, 1923, for 25, 15, 20, 20 and 24 grains, respectively were written for me by Dr. Boyd and morphine procured on them. I don't know exactly how long I was his patient, about that time was when I first started to be his patient. I cannot tell you exactly the months. I was in bad shape. I wouldn't be able to remember much of anything. Prior to the time I went to Dr. Boyd different doctors had been supplying me with morphine. Immediately before I went to Dr. Boyd Dr. Ryan was looking after me. I was a patient of Dr. Ryan off and on for three or four years. I think Dr. Ryan left me. I got down sick and couldn't work and couldn't do anything, was over here in bed. Dr. Ryan declined to administer further. It was after Dr. Ryan stopped administering that I became sick. (The prescriptions read were offered as exhibits.)

Cross-examination by General Whitaker:

I had been a morphine addict twelve or fourteen years before Dr. Boyd began to treat me. I became an addict on account of an automobile accident. I went to the hospital for that accident in

Atlanta. I have been an addict from the time of the accident up until now. Dr. Boyd began to treat me six or eight months ago. He found me in the hotel on Market and Ninth Street. I was very near dead when he found me. I was in a pretty bad condition. I was down and couldn't move, confined to my bed. I weighed about [fol. 27] 130. I didn't send for him. I wasn't able to send for him. I didn't know anything about it. My wife sent for him. He treated me there in the hotel for a couple of weeks before I could get up and get out. It wasn't long before I went to his home for treatment, a month or so. I was a long time in getting where I could do anything, and then I got sick again afterwards. I had gotten able to look after his car and chauffeur for him some. Dr. Boyd was treating me in order to try to relieve me of the morphine habit. Under his treatment he got me in condition where I was able to return to work. I had been at work a couple of months before I took chills and fever. I am getting in shape to work now. I am still under Dr. Boyd's treatment. Before Dr. Boyd began treating me for that habit I was taking eight or ten grains a day, all I could get. I couldn't say how much he has reduced the amount of morphine I was taking because he didn't tell me just what was giving me originally. Each one of the prescriptions I have proven states on its face that it is given to me for relief. For the past two or three months I have been taking half a grain at a dose. For the past month or two I have been taking two or three doses each day, never more than three doses any day within the last month or two and often not more than two. Prior to that time and when he began his treatment of the habit I was taking eight or ten grains a day. I was confined to my bed and in a helpless condition when he began to treat me. Until I was taken sick the last time with chills and fever I was able to pursue my trade. At the time he began to treat me I weighed about 130 pounds. From the time I was sick, I had gained about 30 pounds, I think. I gained considerably, weighed something like 160 pounds until my last sickness. I was taken sick with chills and fever about four months ago. I have been relieved of the chills and fever a short time, about a month. Under his treatment I think he was gradually reducing the amount of morphine I had been previously taking. He gave me different kinds of medicine to relieve me of the morphine habit. He gave me a tonic, an acid. He counseled me that in order for him to perfect a cure or to relieve me that I had to assist myself in trying to restrain from the use of this drug, repeatedly.

Redirect examination by Mr. Taylor:

During this time I have been a patient of Dr. Boyd's some eight months I have paid him very little money. I try to pay him when I have it on what he had done for me. I gave him a dollar. My [fol. 28] wife's name is Mrs. C. W. Cox. In July, August and September she was living in Atlanta. She is an addict. She has been addicted twelve or fourteen years.

Recross-examination by General Whitaker:

Dr. Boyd treated her for this trouble. Her condition is improved a great deal. She was in bed two or three years. Under his treatment she is able to be out, and attend to her household duties.

Redirect examination by Mr. Taylor:

I don't know whether she was using cocaine when she went to Dr. Boyd. I guess she was using the cocaine solution. I was also. That is what caused my blood poisoning. Since I went to Dr. Boyd I stopped the use of cocaine and use morphine.

R. F. Park recalled by the Government:

Direct examination by Mr. Taylor:

I am at the Read House Pharmacy. As such I have custody of the narcotic order forms presented and filled for Dr. Boyd. I brought the order forms for the months of May, June, July, August and September. Serial number Y 737,297, 12 100 half grain bottles morphine sulphate, May 26th. That means 12 100 half grain bottles containing 100 tablets each, of half grain tablets. Y 737,296, 12 100 half grain bottles morphine sulphate, May 21st. All of them are 1923. Y 737,295, 12 100 half grain morphine sulphate tablets, May 17th. Y, 737,294, 12 100 half grain morphine sulphate tablets, May 13th. Y, 739,365, 12 100 half grain morphine sulphate tablets, June 25th. Y, 739,351, 12 100 half grain morphine sulphate tablets, June 10th. Y, 737,299, 12 100 half grain morphine sulphate tablets, June 2nd. Z, 76,853 12 100 half grain morphine sulphate tablets, June 2nd. Z, 76,853, 12 100 half grain morphine sulphate tablets, July 27th. Z, 76,852, 7 100 half grain morphine tablets, July 25th. Z, 76,851, 12 100 half grain morphine tablets, July 21st. Y, 738,370, 12 100 half grain tablets morphine sulphate, July 15th. Y, 739,691, 12 100 half grain morphine sulphate tablets, July 11th. Z, 76,857, 12 100 half grain morphine sulphate tablets, August 5th. Z, 76,858, 12 100 half grain morphine sulphate tablets, August 9th. Z, 76,859, 12 100 half grain morphine sulphate, August 14th. Z, 76,860, 12 100 [fol. 29] half grain tablets, morphine sulphate, August 19th. Z, 237,901, 11 100 half grain tablets morphine sulphate, August 28th. Z, 237,908, 12 100 half grain tablets morphine sulphate, September 30th. Z, 237,906, 12 100 half grain morphine sulphate, September 20th. Z, 237,905, 12 100 half grain tablets morphine sulphate, September 15th. Z, 237,902, 12 100 half grain tablets morphine sulphate, September 3rd. That would be 24,600 half grain tablets. (Order forms offered as exhibits) I have been a pharmacist since 1903, twenty-one years, since 1893. It is required of a drug clerk or pharmacist to be familiar with the United States pharmacope-a and materia medica and it is part of his duty to know the various dosages of medicine so as to check against doctor's prescriptions to prevent overdoses and fatalities. I know what the

average dose of morphine is. It is from a quarter to half a grain. Two grains is regarded as a lethal or dangerous dose in a non-addict. Quarter grain tablets of morphine are ordinarily purchased by physicians in the regular and legitimate practice of medicine. A quarter grain is the usual average dose. I think about forty quarter grain tablets a month is the average quantity purchased by physicians on order forms.

Cross-examination by General Whitaker:

These order forms cover five months, May, June, July, August and September.

Redirect examination by Mr. Taylor:

All of the order forms I read into the record are order forms of Dr. Boyd and filled for Dr. Boyd.

Recross-examination by General Whitaker:

It was the habit of Dr. Boyd to leave the morphine, have it put away, and call for it a bottle at a time as he needed it. They are marked as such, his property.

Q. The forms read to R. J. Miller, corner of West Ninth and Chestnut, Chattanooga, dated 9/3/23. Sir: You are requested to furnish the narcotic drugs and preparations listed below to be used exclusively in the lawful conduct of my professional business. Signed A. W. Boyd, giving his address, etc., and then setting out the amount?

A. Yes.

That is the way all these order forms are. It would make a great difference as to what a doctor used who claimed and believed and thought that he had a remedy for this disease and used a great [fol. 30] many in the matter of undertaking to try to relieve them. At the time these order blanks were given I don't know how many patients Dr. Boyd was treating covering that period of time. The amount of morphine that he needed would necessarily depend upon the number of patients that he might have under treatment. In the estimate that I made of what a doctor would consume in the way of morphine, I am referring to a doctor that is only using it in his practice and not using it for the purpose of trying to relieve an addict.

P. C. Day, a witness for the Government:

Direct examination by Mr. Taylor:

My name is P. C. Day. I am with Fritz & Weil Drug Co. As such I have in my possession order forms made by Dr. A. W. Boyd for narcotic drugs during the period from May to September, 1923. 8/2/23 serial number Z. 78,856, 100 half grain morphine sulphate tablets. (Order form filed.) I have been in the drug business about fourteen years. I am not a practical pharmacist. I have charge of the narcotics. I didn't have charge of the filling; I had

charge of the records. In my position it was my duty to check off and keep the quantities and observe the quantities ordered in the monthly records. I filled that position about three years. Fritz & Weil Drug Co. is a wholesale concern. As such it fills order forms for physicians in a radius of about 100 miles of Chattanooga, but there are very few physicians' blanks that we fill. We fill possibly twelve physicians' blanks. They are both residents and non-residents of Chattanooga. I do not know the average dosage of morphine.

S. R. Miller, a witness for the Government:

Direct examination by Mr. Taylor:

I am in charge of the narcotic records at the Miller Pharmacy. I have in my possession the narcotic order forms presented and filled at the instance of Dr. Boyd during the period from May to and including September, 1923. The first is May 2nd, Y, 737,291, 3 100 half grains. May 4th, Y, 737,292, 1,000 half grain tablets. June 1st, Y, 737,298, 2 100 half grains. Y, 737,300, 12 100 half grains. June 14th, Y, 739,362, 12 100 half grains. June 19th, Y, 737,363, [fol. 31] 3 100 half grain tablets. June 20th, Y, 739,364, 12 100 half grains. June 27th, Y, 739,366, 12 100 half grains. July 3rd, Y, 739,367, 12 100 half grains. July 7th, Y, 739,368, 12 100 half grains. July 27th, Z, 76,854, 2 100 half grains. August 1st, Z, 76,855 12 100 half grains. September 9th, Z, 237,903, 12 100 half grains. Those were all applications made by Dr. A. W. Boyd and filled by my company for him. (Filed as Government's exhibits.)

Cross-examination by Mr. Foust:

Several times Dr. Boyd asked me to leave them there. I did not want to do it. He would get them and I would put them away in my safe. He would leave them there and call for them from time to time.

Annie Davis, a witness for the Government:

Direct examination by Mr. Taylor:

My name is Annie Davis; I live on Market Square. I am married. I have lived in Chattanooga about 22 years. I am addicted to the use of narcotic drugs and have been for 22 years. Dr. Boyd has been my physician ever since I have been here for twenty years. He has been furnishing the morphine by prescriptions all the time. I never got any from him in any other way. I just got it put in my arm about four times. It was last year. I haven't had any since. I am taking it now. I get prescriptions yet from Dr. Boyd. I have been getting forty grains on prescription. He cut me down from 42 to 28, something like that right along. I had the prescription

filled dated August 2, 1923, for 48 grains; the one dated August 19, 1923, for 48 grains; the one on August 13th for 40 grains and on August 9th, 48 grains. There is one prescription there that he gave me and he was sick and he just wrote it out and I went up to the drug store and got it filled. Hennessee filled it. That was 40 grains. I have been getting 40 grains all along until here these few days cut us down. I have been cut down in May and June, this month and last month. He cut me down to 24. It had to last me as long as 40 grains. I have been going to him 22 years. I am suffering with asthma and rheumatism. I do not know what my rheumatism is due to. I have been examined by Dr. Boyd. He examined me with a machine that he puts here and puts things in his ears and listens. He never took any pictures of me. He gave me some of [fol. 32] this No. 1 and No. 2. That is just blood medicine. He gave me the medicine right long. I have been taking the No. 1 and No. 2 right along, with the prescriptions. I have been taking it just as long as he kept up with the prescriptions, twenty-two years. When I get out of it I have these spells. When I get out of No. 1 and No. 2 I have spells with my heart. I have got to have it. Doctor put me on it. I have been out of morphine. It is just like your are dead, numb, you don't know a thing, hurting, aching and everything. It don't effect the same way that you feel when you get out of No. 1 and No. 2. It just clears your side out. They are tonics. They are not anything, only just clear. They are about gallon bottles. I took that right along with the morphine. I take it morning and night. It has a laxative effect on the bowles, keeps them open, makes you feel invigorated. I don't think it has any alcohol in it. I carry those bottles home with me. One of the bottles lasts about a month or so. He charges a dollar for one of those He charges a dollar for prescriptions. Sometimes I don't have no money and go over there and get it and he just writes it out. When I have money I pay him. The druggist does not fill the prescription when I don't have the money. A 40 grain prescription costs me $2.60. For the last 22 years I have been paying $3.60 for the medicine per week. Sometimes they last a week and sometimes they don't. At the time I got the one filled on August 9th and the next one on August 19th I had not gotten any between from anybody else. The August 9th one was 48 grains. The August 19th one was 28 grains, but that was a mistake; that is the time I got it and I guess I was sick, and didn't know he was writing it out when he had those chills. I got along all right those ten days. I had to stretch it out some way. Dr. Boyd is the only one that prescribed for me. Dr. Boyd has not been away from Chattanooga since I have been around here for twenty-two years. I get my prescriptions every week. When I get my prescription filled it is just one of these blocks, about forty grains, get three blocks. They are all in a big box about that long. I could take that in two days if I wanted to. I never let anybody have any of my morphine. My husband uses it. I don't know where he gets his, I don't know where he is. I haven't seen him since January. I haven't heard from him. Before January he got it from Dr. Boyd. He got it as long as I did,

22 years. He took just the same as I did. He got shot with a bullet through his leg and the doctor put him on it twenty-two years [fol. 33] ago. The doctor treated his leg and gave him morphine and he got the habit. He kept it up all that time. He has got the same system I have. I always go to the doctor's office for my prescriptions.

Examination by General Whitaker:

I am thirty-six years old. I have been married quite a long time, I cannot say now. I was married when I was 19, in Memphis. We didn't live there very long. We came on through to here, been here ever since, several years. I believe it was about eight years we lived in there. I have never been in Nashville. I lived in Memphis eight years after I married before coming to Chattanooga. I guess that would have made me 27 years old when I came to Chattanooga. I have only lived in Chattanooga about nine years. I never met Dr. Boyd until several years after I came to Chattanooga. He has been prescribing for me ever since I have been here. He has been writing right on along. I haven't been nowhere else but Dr. Boyd. I have been ailing with the rheumatism and asthma, from the heart and for these spells. It is from that heart trouble; when I get out of it I have that trouble. I have convulsions, commonly known as fits. It is just regular from the heart. These convulsions which I have would usually come when I was out of any sort of morphine. Dr. Boyd was treating me for these convulsions and for asthma of the heart and rheumatism. He gave me that when I didn't have the money. When I had the money I would pay and when I didn't have I wouldn't pay. Dr. Boyd would treat me whether I had the money or not. He would prescribe for me just the same. I took a dose of that medicine out of the bottle every meal, and when I felt like I was ill, I took it every night and morning. A dose of that was a tablespoonful. Dr. Boyd told me several times not to come back over there, and I went in and got it. He was trying to relieve me of my trouble. He was trying to get me away from the dope habit.

GEORGE O'NEAL, a witness for the Government:

Direct examination by Mr. Taylor:

My name is George O'Neal. This has been my home ever since 1909. Since I have been in Chattanooga I have been a patient of [fol. 34] physicians. I have been to Dr. Boyd. He has treated me. He has been regularly my physician about a year, but I came back from Oklahoma and since that time I have gone to him more than I ever did before. I cannot say that I have gone to him at any specified regular intervals, but I have a very bad condition of T. B. of the bones, and I have had to have that looked after aside from anything else. That is an ulcerated bone sore. He has treated that

at times. I mean I have not gone to him at regular intervals for this. I have gone to him and he has given me treatment for the addiction. I go to him at regular intervals for prescriptions. I did not commence going to him regularly for my treatment for addiction until I came back from Oklahoma about a year ago. I came back from Oklahoma in June. I was gone about three months. I think the first morning I got back I went to him. I have gone to him since June, 1923, whenever it is necessary for me to go to him to get a prescription usually around about every three days. When I came back from Oklahoma I was taking all the morphine I could get. I bought some from anyone I could get and then I got prescriptions sometimes. I have taken more than eight grains a day. I judge on account of the condition I have here that it would make me take more really than I should, I expect, but nevertheless the tendency is to increase, not only me, but anybody, whether afflicted or not. I judge I have taken an average of twelve grains a day, back in June when I came from Oklahoma. I don't know when I got my first prescription from Dr. Boyd. The first time I went to him he administered. Whenever I felt that I needed treatment and didn't have a prescription or didn't have anything myself, sometimes I would go there and he would dress this leg and the condition of the leg was so bad sometimes he would administer to me hypodermically. I don't know how much he gave me that way. He wrote prescriptions for me awhile, and then I didn't get any more from him, and then again, here not long ago I began getting prescriptions from him again, but I cannot specify the exact time. I cannot say whether there was any appreciable length of time after I came back from Oklahoma before he began writing prescriptions for me. I don't remember that. You see sometimes if you have been going to some other doctor, or if for any reason you have to change and get another one to write prescriptions for you, it is not so easy to get them to take you on, and it may be, on account of a contingency of that kind that he might have given me injections for a [fol. 35] short time until I got the thing straightened out. He has given me injections, but I cannot tell you how long the length of time he gave me before he gave prescriptions. He didn't write prescriptions for me very long. I guess probably two or three months. I visited some other doctor for the last two or three months. Dr. Boyd said he had so many he would appreciate it if I would find another doctor, and would rather not take any more if I could get some other doctor to do it. I then went to Dr. Wert. Dr. Wert is away on a vacation and I had to go back to Dr. Boyd on account of that. I went back to Dr. Boyd on account of that. I went back to Dr. Boyd since Dr. Wert has been gone, I guess about a week or ten days. I filled the prescriptions from Dr. Boyd at the Read House Pharmacy. The prescriptions called for 24 grains. I got it down to about eight grains a day. Every three days I get a prescription. Recently I have not had anything done for my tubercular condition except fresh dressing and surgical dressing and things like that put on it, to keep down eruption. It is advancing. I have a bad condition. It extends down to the bone. They call it osteomalitis. Dr.

Boyd, especially, every time I would go to him, he would insist that I have something done for it, even if I had to have it cut off, every time I went to him, if it was necessary, even an amputation. He has insisted on it every time I have gone to him. The prescriptions written on August 11th, 14th, 17th, 23rd, 26th and 29th say on their face that they are for 24 grains each. I had them filled and they are written by Dr. Boyd. I was using that quantity myself, using it hypodermically. In August I might have been taking a little more than 8 grains per day. I said the tendency is to increase. I don't remember of any instance that I ever went into Dr. Boyd's office that he didn't preach to me my use of it, to cut it down, cut down, cut down, as much as I could, and he also insisted, he says, I cannot cure you in the condition you are in; if you get something done for the leg then I might be able to benefit you, but the condition I was in, he says naturally it would be hard to get rid of any on account of that. I am a piano tuner. I haven't been employed but very little. Everytime I went in Dr. Boyd's office he always insisted on me having something done to get rid of the injection if possible. He has looked at it, and he says the condition is so bad and stated it was not possible to cure it, in fact he said the best thing to do was to have it amputated. He said he could do it if I would get myself in proper condition. He has remedies down there [fol. 36] for the general condition. I don't know the names of them. I believe he calls some of it No. 1 and No. 2 and No. 3 and some other names that sometimes I have gotten that from him and then he has given me a white powder which he calls acid given me that on a number of occasions. I don't know what it is composed of. I really believe, of course that would not have any bearing on this tubercular bone trouble, but I believe if a man took that consistently and carried out his instructions, I believe it would help him so far as the addiction is concerned. I cannot say that I took it regularly. He usually would furnish an eight or twelve ounce bottle of liquid. I have gotten a dozen from him, I guess, over a period of the last year. I have gotten them at different intervals and he has given me these boxes of acid. He would insist on my taking that. I cannot say that the tubercular condition of my leg is any better. I believe I am better generally than I was. At least everybody says I look better, but I haven't very much strength. I am taking some three or four grains less than I was a year ago. I never used cocaine but very slightly. I was not taking cocaine when I returned from Oklahoma. I have not since. I have gotten morphine from Dr. Boyd since I have been his patient in June except as I explained when I was away from him and with Dr. Wert.

While I was his patient I was exclusively his patient. When I had the money I would pay him for prescriptions. If I didn't, I would get it just the same. Sometimes I paid him right at the time; other times I didn't have any money would get it just the same. I couldn't say that I ever paid for some. I usually paid him half a dollar.

Cross-examination by General Whitaker:

Dr. Boyd has never failed to prescribe morphine for me or failed to dress my tubercular leg because I didn't have the money to pay him. He would prescribe for my tubercular condition or undertake to relieve my addiction without money just as quick as he would with it. He always insisted that I should cut down if I could. He told me if I didn't cut down it was just making it that much harder for me. The treatment that he gave me was for the drug habit. He has remedies that are labeled No. 1, No. 2 and No. 3. I think they are eight ounce or twelve ounce bottles. He usually charged a dollar for these bottles, but if you didn't have the money you got it just the same. That was his treatment for the drug habit. The powder [fol. 37] that he gave me was anti acid. It was to help me to cut down to a small amount, if possible, if I consistently took it. As long as I took that under his instructions I was able to reduce the amount of morphine that I had previously taken. I didn't go to Dr. Boyd regularly before I went to Oklahoma. I was out there about three months. I returned from Oklahoma in June, a year ago. I have been under Dr. Boyd's treatment since that time with the exception of part of the time he said he had so many patients that he would appreciate it if I could find another doctor. I went to Dr. Wert. He didn't do anything for this condition here except tell me the same thing Dr. Boyd did, that the best thing to do was to have it amputated. Dr. Wert has dressed that leg a few times. Whenever Dr. Boyd looked at it he dressed it. I cannot stand up on that leg at all if I haven't got morphine. It is excruciatingly painful, it swells. I think it was an absolute physical necessity when my leg got in that condition to have morphine. My leg will swell whether I have it or not, but it will swell more if I haven't got it, and be more painful. When I got back from Oklahoma I was able to work only as I stated, just a little while, but not all the time. I am not capable of holding a steady position any more. I think I am better now of my addiction and my tubercular trouble since Dr. Boyd's treatment. I am able to walk around and attend to some business. I have to make a living. I have no other way to make it. I have a mother. I am thirty-five.

Redirect examination by Mr. Taylor:

I cannot say that my left leg would be painful without morphine in the same way that the other would. If I didn't have any physical ailments of any kind and was addicted to the use of the drug, why there is no physical pressure, none any worse, because of the withdrawal of the morphine. I cannot say how many times since June last year Dr. Boyd has treated my limb. He has preached to me, as I said, every time about going to the hospital and getting something done. I said I cannot do it because I have an invalid mother to take care of. I have to work. I guess he treated me a dozen times. He dressed it any number of times. Practically every time I would go there and want it dressed, he would dress it.

[fol. 38] FRANK O'HARA, a witness for the Government:

Direct examination by Mr. Taylor:

My name is Frank O'Hara; I live on Whiteside Street. I have lived in Chattanooga about seventeen or eighteen years. I have been able to work for the past few years. I am addicted to the use of morphine, and have been about eighteen or nineteen years. I was residing in Alabama when I first got addicted to it. I had a bad case of syphillis and it went into rheumatism, just physically unable to do anything for a long time. I have been a sufferer from rheumatism since then continuously. I have consumption. My people all died with consumption. I guess I have had it all my life. I guess my people before me had it. I dont know as I have ever had but one or two hemorrhages. I don't know when that was. I was in pretty bad shape last July or August. Last August I had a hemorrhage, bled from my mouth, great big clots of blood. I have been a patient of Dr. Boyd ever since the clinic was going on, about three or four years, something like that. I was a patient of the Chattanooga clinic. When the clinic closed I went to Dr. Boyd. I have not been his patient all the time since the clinic. I was Dr. Gould's patient awhile. I guess I was Dr. Boyd's patient eight or ten months before I went to Dr. Gould. When I first went to Dr. Boyd's office he examined me. He at first refused. He told me he couldn't take me on unless I would have treatment or something. It is a big bottle of medicine or some black medicine for my whole system, and then for my lungs and everything. I took that. I have taken a whole lot of it. Whenever one bottle would get out he would change to another bottle, just keep filling it. I was taking another medicine while I was taking that stuff out of the black bottles, some medicine that he prescribed for treatment to build up your system. I was taking morphine along then. When I first went to him I guess I was using about twelve grains a day. I was getting quite a little bit at the clinic, say ten grains a day, and all I could get. All I was getting I was getting at the clinic while at the clinic. I went from the clinic to Dr. Boyd. I think Dr. Boyd started me on about eight grains a day while I was taking out of the black bottles. I couldnt say exactly how long I continued taking eight grains, but I gradually reduced down. That is about three years ago, when I left the clinic. I took the black medicine until I changed to Dr. Gould and then I went back and started taking [fol. 39] his treatment again. I was that way eight months the first time and then went to Gould. At the end of the eight months when I left Dr. Boyd I guess I was taking about seven or eight grains a day. I was taking about even grains. I always try to hold it down because of the expense. I am married and got a family to take care of. I was getting prescriptions from Dr. Boyd. I guess I was with Gould about seven months. I left Gould and went back to Boyd at the time Gould got sick and died. I have been Boyd's patient ever since then. When I went back

to Boyd the second time he gave me this tonic, and then he has got a new treatment, anti acid. I don't know what the ingredients of that are, but it is a treatment he recommended, and I took that. I don't know exactly when that was. It was after I left Gould and went back to him. I first started taking the tonic, and then later on taking the acid. In time he told me he could cure the morphine habit; that he would have to get my system up and try to cure the disease and treat it along. He didn't say any certain length of time it would take to cure me. I couldn't say how much liquid medicine I took this last time of Boyd. He kept me on those bottles four or five months. It has been a good little bit since I had any of that bottled medicine. I am now taking that anti acid, about four months after I started back to him the last time. I am taking the anti acid now. The four prescriptions filled at Miller's Read House Drug Store, dated August 5, 1923, 30 grains; August 11th, 30 grains, August 17th, 30 grains and September 29th, 24 grains are prescriptions gotten by me. I am now taking not quite five grains per day. I don't know how long I have been taking that, but I am reduced down to 28 grains, I am taking every six days, and I get it on the seventh day, that does me six days, 28 grains. I have not been getting that quantity very long. I have reduced down on it. I commenced reducing when I first started with it. I was unable to do mything at all and couldn't work at all until I did start. When I went there he gave me so much, I believe it was eight grains, something like that, to start with, and I have got down to about 28 grains. He has been gradually cutting me down. I will go on a certain amount awhile, maybe two or three months or more, and then he would get me down, and then I would go a period of time and he would cut me again. It has been kind of a stepped off reduction. During the period I have been with Dr. Boyd you might say I get it in doses, because it was a certain amount, and it was to do me [fol. 40] a certain length of time. It was altogether. I have not been going to anybody else during that time. Sometimes I didn't pay anything at all for the prescriptions. When I did pay, I paid a quarter or half a dollar or whatever I had. He knew that I was right up against it. Since I have been employed it takes all I make to get by on. I pay him sometimes, and sometimes I don't. He just writes the prescriptions. I don't think I have ever paid him over fifty cents.

Cross-examination by General Whitaker:

When Dr. Boyd began to treat me I wasn't able to do anything. I was down in such a fix that he had to come to the house to see me. He refused to allow me to have any morphine or give me a prescription for morphine unless I would take treatment to relieve me of the habit. He first told me that he would rather I would go to somebody else when I first started; that has been right after the clinic, if it was the morphine I wanted, because he told me that he would take me on and treat me for it. He declined to

prescribe any morphine for me at all unless I would take his treatment for the cure. While I was under his treatment he gave me a prescription seeking to relieve me of the drug. He gave me a tonic, and then I taken that anti acid. Under the first treatment, before I went to Dr. Gould, he gave me the large bottles called No. 1 and 2 and No. 3. I took that. He didn't charge anything for that mostly. He gave it to me. I was in such a fix I didn't have anything. I am married. My wife is afflicted with epilepsy. Dr. Boyd treats her too. I could get treatment from him and get a prescription from him with or without money. Since he has been treating me I am not taking nearly as much morphine. I have gained in weight. I was what you might say an invalid. I was in bad shape when I went to Dr. Boyd. I had been a dope fiend for seventeen years before I went to Dr. Boyd. I am afflicted with tubercular trouble and rheumatism. It runs in the family. I came here from Alabama. I got to be an addict in Alabama. When I came here I got to be in such a condition I was entirely down and out. I have worked ever since I have been taking Dr Boyd's treatment. Before that I was in such shape I couldn't do anything at all. I am now able to work and have been you might say ever since about a month after I started with him. I gradually started gaining my strength. When the city clinic would allow me to have dope it furnished me about ten grains a day. [fol. 41] I am down now to less than five grains a day; 28 grains every six days.

Dr. J. B. STEELE, a witness for the Government:

Direct examination by Mr. Taylor:

I was at one time city physician of Chattanooga. I was city physician, assistant city physician and police surgeon for about seven years. I went out of that work about twelve years ago. In that office I had under my observation and direction narcotic addicts. It will have absolutely no effect on a narcotic addict to cut him off from the drug except great mental and physical pressure for a few days. I don't think there is any danger of death resulting. Morphine sulphate or any of the derivatives of opium have no curative properties. I would like to explain that in this way: Morphine is invaluable where a man has a broken leg, maybe shot, where you have a man shot in the abdomen, have to give him morphine to stop the peristalsis, the action of the intestinal tract or any emergency, it is invaluable in those cases, but as a curative value for any disease it is absolutely worthless. Morphine stops the secretions, causes constipation at first, and after they get to taking it for awhile some of them have diarrhea. It is not indicated for anything except in cases of emergency or great pain. If you give morphine, as I have stated, it constipates considerably, dries up the secretions, stops the secretions. Morphine would not be indicated in any way in an ulcerated leg or tubercular bone infection. The average tuberculosis

bone can be helped by putting a man in a hospital flat of his back and giving surgical treatment. I have not seen George O'Neal's case of tubercular bone or osteomalitis. Morphine would not be indicated as a treatment in that sort of condition. There is no well recognized medical authority that prescribes the treatment of morphine in that condition or any of the derivatives. I have had no experience with the narcotic clinic in Chattanooga. I don't know anything about any dope fiends at all. I never treated one in my life. While I was city physician, we had a great number of dope addicts arrested, cocaine fiends, some of them colored people, wild on the street with cocaine. I never had anything to do with that. You see I was out before they ever started any clinic here. Many of those were confined. The method of treating them was to lock them up and give them a big dose of castor oil. No fatalities re-
[fol. 42] sulted. I had an average practice when I was doing general practice before I went with the insurance company. I didn't do any large practice, but I had a very fair practice as practice goes in this town. I don't think I ever used one of these little vials that hold 24 tablets, last me anywhere from four to six months. Sometimes you would use more than that counting what the nurses at the hospital would give a patient that came in shot or something like that, treat a great number of emergencies, surgery, and I always gave those people the hypodermic when they came in. In my opinion the only place for morphine in the practice of medicine is in emergency cases. I was going to say, a man that had an abdominal wound or shot, we used to give those people morphine for seven or eight days keep them practically under morphine, so that the peristalsis would stop so the wound would heal, keep the secretions from working. I cannot say what the maximum quantity of morphine would be for the use of a physician in his practice. I am speaking for myself. I think I used to buy one of those little 24 tablets, would last me four to six months. Those were quarter grains. I never used a half grain but one or two times. Sometimes you have an acute case where you have to give a large amount to some person, but I always use a quarter grain. I think the quarter grain is the one most frequently bought by physicians to use as a dose.

Q. Assuming that a physician believed that it was within the legitimate practice of his profession to regard morphinism as a disease, and it was a part of that physician's belief that he had a right as a physician in the legitimate practice and in an effort to cure morphinism, which he regarded as a disease, to prescribe morphine on the theory that by doing so and adding thereto other medicines he could gradually over a period reduce the quantity of drug until it became a minimum, and finally by that method reduce the quantity to nothing and cured the patient, what period of time would it require to so reduce the drug without giving the patient any discomfort whatsoever?

A. I cannot say, even assume. I never treated anybody that way. I just don't believe in that kind of treatment, never did it. If a man came to me with morphine I would take him off of it right

now; I wouldn't fool with him. I am not in a position to answer that question.

I think it would be a help to him to take him off of it if he was suffering from osteomalitis in advanced stages. I think it would help [fol. 43] a patient to withdraw the morphine who had suffered from an old gun shot and become addicted to the use of it. I think the withdrawal of it would be very important to a patient suffering from tuberculosis. I have been through several tubercular institutions throughout the country, and I don't think I ever saw any place where they gave morphine for tuberculosis. Some fellow passing out they might give him a dose to make him easy. As far as using morphine in the treatment, it is unheard of.

Q. Bearing in mind that the jury is composed of laymen who are not acquainted with the effect of various drugs, just tell, if you can, what the physiological effect of morphine in large doses is and would be upon first a normal person, just how it would effect his organs, various organs, and how that would relate to the curing or retarding of say tuberculosis, syphillitic rheumatism and matters of that sort, and just discuss the effect of it as briefly as you can.

A. A person who has never taken morphine——

Mr. Foust: I object to that question because he is trying to contradict his own witness.

The Court: I will let him answer.

Mr. Foust: Exception.

A. A person who has never taken morphine who took a dose or had a dose administered, we will say half a grain, why they would first feel in a very few minutes, I believe that is a good expression, feel like they owned the earth, have no fear, of course no pain; it contracts the pupils of the eye until they get down to pinhead pupils, and it stops all the secretions, locks up the bowels, causes gas to form in the intestinal tract, and in fact is a depressant, because it depresses the heart action.

My method of curing the ordinary disease, particulary those that generate toxins in the system, is by elimination. I think the average physician feels that is the ideal way. The introduction of morphine in the condition I have just stated, would, I think tend to lock up or prevent elimination. It also seems to make them anemic, all seem yellow, anemic, pale, don't seem to have any red blood cells. I should not think that condition would be one favorable to combating any form of disease. I am not medical director for the Volunteer State Life Insurance Co. I pass on the insurability of all applicants.

Cross-examination by General Whitaker:

I do not do any general practice at all now. I came out of the service and went with the company on what is known as a part [fol. 44] time basis. I think I stayed on there about a year, and then they contracted with me and took my entire time. That would be about four years. I have been in the practice since 1905, about fifteen years. Doctors disagree on lots of things. The only way I can an-

swer as to whether a morphine addict is curable, is to take an addict off of morphine entirely. It is absolutely up to that man as to whether he can stay off of it. I don't believe there is any medicine to keep a man off of it any more than whiskey. I believe in the Keeley cure only to this extent: they take a man off of it by giving purges and hot douches, and then it is up to the man when he comes back to stay off of it. I don't believe there is medicine to cure it. Of course a whiskey drunkard or morphine drunkard needs elimination. That is what you do for him when he goes to Keeley, is elimination. I don't think the profession is interested to find out what is the proper method to eliminate whatever may be in the system that makes it impossible for a morphine addict by his own will to stop. You can take any man that is a dope fiend or whiskey fiend, and give him a lot of salts, pluto water, and eliminate him, that is the easiest thing in the world, to eliminate him. I didn't say it took the desire away. I said it is a man's own nerve that when he comes out of the dope cure or any other place after he has been taken off of it, it is up to him entirely to stay off. Call it cured if you want to; after he has been taken off of it.

Q. Isn't it your judgment as a doctor that every narcotic fiend, if there is a treatment for that trouble, is entitled to have it in order that he may get to a place where he can exercise will power to save him from such a terrible condition; don't you think that is true; he is entitled to a treatment.

A. I don't know what you mean. I would like mighty well to see the man stop or somebody put these people on a farm and take them off of it.

Put them on a farm and give them fresh air and take them off of it. I said I didn't have anything to do with the city clinic, and I never had a drug addict that was my patient as a drug addict come to me and ask me to give him so-called reducing doses. I have made quite a study of it. I had a great many when I was police surgeon. I would not count myself a specialist on the subject. The normal dose of morphine to a man not a user of it is owing a good deal to the condition of the man. If a man came into your office and was absolutely all right, and you gave him half a grain, you [fol. 45] might be up against morphine poisoning. On the other hand, some individuals would take half a grain, and while they would go to sleep, they would not die. It is rather hard to answer that question. A person that becomes thoroughly addicted to the habit through a period of years could take enough morphine in one dose to kill him, but I had one young fellow, a minister's son, by the way, that took sixty grains of morphine and thirty grains of cocaine a day. I don't know what it is that gets in the system that enables a non addict to take only half a grain and a confirmed addict twenty grains unless they build up an immunity for it by constantly taking it. They get their system in such condition that they can take large doses of it, just like a man can with liquor or a lot of other things people get to taking that way, build up a tolerance for it. I think some authorities claim that they have an acid condition. That is where your elimination comes in. The proper treatment is to take

them off of it. It will cause an undue accumulation of acid in the body. The best treatment is to take him off his morphine and you will relieve him of the acid all right.

Redirect examination by Mr. Taylor:

Q. Counsel has asked you a hypothetical question. I ask you this, Doctor: Assuming that the explanation of the ability of the narcotic addict to take enormous quantities of morphine daily is due to the fact that one has built up, you might say, an antidote——

A. Built up a tolerance.

Q. —an acid that has a tendency to neutralize the morphine introduced, then I will ask you, Doctor, if the neutralization of the acid or some anti acid, soda or some similar drug would have any tendency to cure a man of any disease, or wouldn't it have the effect of simply making a small quantity of morphine go a longer way and produce the effect?

A. The only way I can answer you is to take them off of it. By elimination with your withdrawal, that is, salts and things of that sort. I consider morphinism a habit like drinking liquor. It does not produce any organic disease like cancer or those kinds of things. It effects the organs. That is functional entirely. It destroys the red blood cells. I think the damage is done by the big doses of morphine, that is, the constant taking of it. If doctors would not prescribe to addicts, bootleggers would not give addicts morphine, and they could not get any from any source, they would all get well; wouldn't be any.

[fol. 46] Dr. L. C. Williamson, a witness for the Government:

Direct examination by Mr. Taylor:

I have been a practicing physician since 1906. I am a graduate of medicine and licensed to practice. I practice chiefly right here in Chattanooga. I have had a general practice mostly. There was about ten months I was working with the city clinic, had charge of the addicts. I had to examine them all and prescribe the amount of morphine they should have each day. I don't think it was operated under the State law; the way they told me, when they wanted me to help them was that the city physician and the commissioner of health and education started it, I believe, at the suggestion of some of the narcotic men. It was our aim at that time to establish a hospital here. Morphine sulphate has no curative properties at all. It is not indicated for the treatment of any disease, just the relief of an acute pain. Its physiological effect on the human body is to dry up all the secretions, causes atrophy of the excretory glands, liver, spleen, etc. It checks the peristalsis action of the bowels. We give it in an acute condition of gun shot wound in the bowels, controls the peristaltic action of the bowels. Morphine checks the peristaltic movement of the bowels; locks them up, so to speak. Nature's method of emitting

disease and relieving them that way due to toxic conditions in the system or poisons that are generated in the body, is by elimination, through the bowels, kidneys and sweat glands. The introduction of morphine into the human body has a tendency to check the elimination of each of those organs. It just holds in check nature's effort to cure any disease. Nature cannot do her work if you check all her secretions. The use of morphine for any long period of time is a habit. Long continued use of it will have a tendency to cause the liver to become small or atrophied, drying up the secretions and all the other internal organs or glands. The treatment for morphinism or drug addiction is to take it away from them That is the recognized treatment. While I was connected with drug addicts at the city clinic I made a special study of the disease. It is recognized by the medical practice that what is known as a perambulatory treatment is an unsuccessful and useless effort. You cannot control a patient if he is getting morphine promiscuously and taking it as he pleases.

[fol. 47] Q. What would be the result, Doctor, if all doctors would refuse to give morphine addicts morphine and they couldn't get it from any other source?

General Whitaker: I object to that.

The Court: I will let him answer that; he is a physician.

A. You would have a bunch of sick addicts for a few days and that would be the end of it.

They would be affected adversely from five to seven days. They get sick, suffer and cramp, they will sweat, the sweat glands will turn loose from the absence of the morphine, sweat like everything, nervous. When that sweating is going on nature is eliminating the poison, caused by the locking up of the secretions by the morphine.

Q. What does nature do when morphine is introduced into the body that enables an addict to take inordinately large quantities of morphine without death resulting, as if it were introduced into a non addict's system?

A. The way I would explain that is that morphine is an alkali. Bismuth and soda are some of the other outstanding alkalis, ordinary table soda, and the more morphine you get and lock up the secretions, that causes an acid condition in the person. Addicts are very acid, because the poisons in the system are continuously forming the acid. It takes more morphine to satisfy an extremely acid person, even in normal condition, because it takes more of the alkali to overcome the acid. The normal condition of the blood is slightly alkali. I never examined an addict's blood. I presume that would be alkali slightly, the urine; and acid. The fecal matter would be acid.

Q. Assume, Doctor, a patient suffering from osteomalitis or tuberculosis of the bones in a rather advanced condition of the lower limb, extending from the middle of the thigh to below the knee, and that person being an addict to the use of morphine, would the sudden withdrawal of morphine from that patient have a tendency to aggravate or benefit that condition?

A. It would benefit the condition.

In ulcer or wound there is always a little serum thrown out by the blood to help heal the place over. It has a tendency to stop the creation of the serum. A tubercular condition of the bones releases into the system toxins. Nature would reach that toxemia introduced [fol. 48] through a sore of that sort through the kidneys, mostly, and the bowels. The use of morphine would obstruct nature in relieving the system from those poisons. The withdrawal of morphine would tend to aid that condition. Morphine is not indicated in the treatment of such a condition. In an asthmatic condition, morphine just causes temporary relief. Asthma is a spasmodic contraction of the bronchi in the chest, and your asthmatic attacks come on and just chokes them down. Morphine as other drugs, will give temporary relief, but it drys up the secretions. The use of morphine in the acute convulsive stages of asthma would be a symptom. Morphine would have a tendency to retard it. There is only one cure for asthma, and that is change of climate. Morphine is not indicated for asthma except in the spasmodic attacks, to relieve coughing. An asthmatic could not be cured under any conditions while large quantities of morphine were being administered. I would not consider morphine used even in advanced stages of tuberculosis. However, it will relieve their last dying symptoms, probably ease them out a little bit easier. It has no favorable function in the treatment of tuberculosis looking to the cure of it in any stage. There is a specific treatment for syphilis; is 606, salvarsan. It is claimed to be a specific. It is my experience that it is a cure. Morphine is not indicated in a rheumatic condition produced by syphilis. The withdrawal of opiates, narcotics of all kinds, would be beneficial in that sort of a case. Rheumatism is a symptom. Generally speaking, rheumatism comes from some poison in the system. The use of morphine would tend to interfere with it, hinder the care of it. Morphine is not indicated in the treatment of any disease. Morphinism is not a disease. In giving the reduction treatment to cure morphinism, ten days would be the maximum to cure it. I tried it in Erlanger Hospital, kept them in solitary confinement with a guard over them, and I took it away in ten days, and they were taking ten to fifteen grains a day. These boys didn't know when I took the last away. After the withdrawal of morphine, the demand on the part of the patient for it is physchological, or in the mind. Good nutritious diet, fresh air, change of associates is recommended by reputable physicians after the withdrawal of morphine. Tonics build them up. Elimination always has to be kept up in any condition, eliminate the poisons. I mean by that introducing drugs into the system that will cause proper action of the bowels. The system is more or less an acid, and the alkaline laxative is given. Most of it has been manufactured in the system when the secretions [fol. 49] were tied up. I should think a tab ordinarily that contains twenty quarter grain tablets would allow the average physician in the legitimate practice of the profession of medicine only, giving him about five hypodermics a week, if he had a large number, a tab

a month, twelve tabs a year, sixty grains a year. Different men's practice is so much different some places, in fact more hypodermics to give. Ten times that much or 600 grains would be as much as could be used under any conditions. The general practitioners usually use quarter grains; the army put it out in eighth grains. The normal non addict dose administered in the legitimate practice of medicine is a quarter grain. One grain administered at one time to a non addict might kill him, put him to sleep. Morphine is a heart stimulant, but a respiratory depressant, and a person dying from it dies like they were choking up from mucous in the chest. A doctor would not be justified in extreme pain in giving as much as a grain of morphine unless he is well acquainted with the patient. He would step it up from a quarter and watch the effect of it.

Cross-examination by General Whitaker:

I have been a practicing physician since 1906. I was a year and a half near Tullahoma. I have been a practicing physician in Hamilton County since the first of November, 1907. I practice in Chattanooga. My home and office is East Lake, a suburb. I had an office in Chattanooga for a few months. We doctors disagree often about what is a proper treatment of different physical troubles. The morphine habit is a habit and not a disease. I cannot say that there is a variety of opinion in the medical profession as to whether or not that is true. Most of them I have talked to say it is a habit. I have heard doctors say it is a disease. There is a difference of opinion among doctors as to whether a person addicted to morphine is a diseased man or a man of habit. If it is a disease it is subject to medical treatment. Our regular treatment of any disease is to remove the cause.

Q. What is the cause of a non-addict taking one grain of morphine a day becoming dangerous to him and a confirmed addict taking twenty grains and not dangerous to him, what produces that result?

A. A non-addict has not got himself brought up to that point where he can take much, and the addict has gradually come up to it.

I don't know whether anyone could say what it is that gets in the human system from the use of morphine that makes it possible for an addict to take twenty grains without impairing his life, because [fol. 50] there are some things we don't know about it. There are a great many things we doctors don't know. We are always learning. There has been a great advancement in the last quarter of a century in the medical profession. We used to starve a patient with fever for water, and now we give him all the water they will take. The only successful treatment we have now for morphine addicts is to stop the drug. If someone else knows or thinks they know more about it, they would be in a class almost to themselves, because the general opinion of the medical fraternity is to eliminate it. If in the use of morphine you get so you can take twenty

grains a day without impairing your life, the system, of course, becomes more acid and as morphine is an anti acid it helps to counteract the acid. It is partially due to the acid that an addict can take a great deal more morphine at a dose without endangering his life. I cannot say that it is entirely due to that. I don't know. A proper treatment for any acid system is anti acids, alkali. The constant use of morphine increases the acid in the system. You have an over supply of acid in the system. An anti acid counteracts the acid in the system. You have to eliminate it, get it out. It would be highly proper from a professional point of view for a doctor to do that. I was associated with the city clinic for awhile. I think it was about ten months. I examined addicts. Our custom was to determine whether or not he had an incurable disease, and then get the history of the man who was taking — and file that away, and give the prescription for so much morphine. We were trying to keep them at that time under control or keep them together to get a hospital. We were trying to relieve them temporarily. If we had a hospital we could relieve them permanently. To that end we administered or gave prescriptions to addicts to have so much morphine in our general treatment of that patient.

Redirect examination by Mr. Taylor:

That was in 1919 and 1920. Assuming that the use of narcotic drugs created in the body where it was introduced, either by locking up the secretions and causing nature to store up acid, or by nature generating it to combat the morphine, either theory of it, if there was a large quantity of acid there, there are other alkalis that would tend to neutralize that acid better than morphine. Morphine is not a peculiarly strong alkali. If a patient came into my office who had a high acid condition, morphine would not be indicated. A heavy dose of soda bicarbonate, bismuth would be in-[fol. 51] troduced to neutralize that. That is what you put in biscuits, sodium bicarbonate, ordinary soda. That is better than morphine for that. There is nothing else that we know of built up in the body other than this acid condition where morphine is used, just a theory, but nothing positive. It is a rather simple proposition to relieve an acid condition. Taking soda and putting it into a glass of vinegar would be the strongest. There are others, of course. If you put enough soda to neutralize the vinegar, you get a neutral product. It is just like taking a soda tablet if you have a sour stomach. That is what happens when you put soda in a glass of vinegar, foam comes up.

Recross-examination by General Whitaker:

I don't know how many of these narcotic cases I have testified in for the Government. I am not very busy testifying for the Government in these cases. I don't know that I am the Government's standby more than any others.

Redirect examination by General Taylor:

I don't know of any physician in Chattanooga who has had more actual contact with morphinism than I had while down there.

Recross-examination by General Whitaker:

I don't know any that has done as little good on the proposition as I have.

STELLA MCRAY, a witness for the Government:

Direct examination by Mr. Taylor:

My name is Stella McRay. I live on Pike Street, Chattanooga. I have lived there all my life. I am addicted to the use of morphine, and have been for fifteen years. First one and then another has been my physician in recent years. I have been a patient of Dr. A. W. Boyd. About a year ago last August he tried to take one off of the drug, and he taken down from a dram every other day to ten grains a day, and I wouldn't stand for that. I felt that I couldn't stand it. I was taking a dram every other day, 54 grains. I went to him. He started to reduce me down. He didn't let me see what he gave me. He got me down to ten grains a day, that is what he said he was giving me. He was giving it to me hypodermically. I stayed with him about four or five months. I would go there every time I wanted a dose. I did not take any away with me [fol. 52] at no time; none at all. He wouldn't give me prescriptions. I would go to his office two or three times a day. He gave it to me hypodermically. I am taking morphine now. I go to first one and then another. Dr. Boyd hasn't treated me in a year. He won't treat me any more. I had female trouble and T. B. of the glands. I had an operation of my jaw. Dr. Banks did that something like a year ago, last August. Dr. Boyd wouldn't give me any prescriptions. Sometimes I would give him half a dollar, sometimes give him a quarter, whatever I would happen to have. The most I ever gave him at one time is a dollar. During this time I was getting morphine from him, when he got me down so low I got from somebody else, that is down to ten grains. I sent a maid down to dark town to get it from bootleggers. Dr. Boyd did not give me any large bottles. He gave me a tonic, a bottle about that long. I would take the tonic off some place and set it down, because I believed the tonic killed the morphine. I wouldn't take it. I did not tell Dr. Boyd I wasn't taking it. He didn't know that. I would not come back with the bottle and get more; he would give me a new bottle. I guess I got between seventy-five and fifty bottles of that from him during the five months. I certainly believe he cut me down as low as ten grains a day. I couldn't stand it that low. I went to somebody else.

Cross-examination by General Whitaker:

It has been a year this past August since I went to Dr. Boyd for treatment. It will be two years next August since he declined to treat me any further. He treated me between four and five months. I was taking maybe a dram and a half of morphine. And he said he got me down to ten grains, but wouldn't let me see what he gave me. He gave me a tonic he furnished me in bottles. I took the tonic off and never used it. When he reduced me to ten grains I stayed away so long, didn't go back to my treatment. I guess he realized I was going some place else to get my drug. He certainly charged for the prescriptions, paid for the medicine. He has given me more than I ever gave him. He did all he could to try to relieve me of the habit.

JAMES PINSON, witness for the Government:

Direct examination by Mr. Taylor:

My name is James Pinson, 617 Carlysle Place, Chattanooga. I have lived here all my life. I am addicted to morphine, and have [fol. 53] been for two years. I have been a patient of Dr. Boyd for a year or year and a half. I am still addicted. I take half a grain a day. I get that from Dr. Boyd. I take it once a day. I take it in the afternoon, about twelve or one o'clock. Sometimes I miss a day. It makes me sick when I miss, suffer pain, stomach, chest; it is cramps, gives me diarrhea. There is nothing to do to relieve that unless you take a dose of medicine, a dose of morphine. I have been taking half a grain for two or three months. Before that I was taking about ten grains a day. I have tuberculosis. I am in better condition now than when I went to Dr. Boyd. My condition has steadily improved since I went to him. I have been gradually taking less and less morphine. I don't think there is anything else the matter with me than tuberculosis. I have been addicted about two years. I became an addict at the National Sanatorium at Johnson City. The doctors gave it to me. I don't know what doctor; some doctor in the hospital. I had tuberculosis. That is the way I first got a shot. I don't remember how many shots that doctor gave me. I have been taking half a grain for two or three months. I haven't paid anything for it yet. When I first started I haven't been paying him anything; didn't have the money. I am not working. I am on compensation of $45 a month. I am married. I live with my wife here in Chattanooga. I don't pay Dr. Boyd anything. I haven't paid him in five or six months. I have been going there once a day during that time.

Cross-examination by General Whitaker:

I was an overseas soldier. I was gassed in France. I contracted tuberculosis from exposure while in the service. I was married before I went to war. When I came home my physical condition was bad. I was discharged out of the hospital. I went to Chickamauga

Park, Government hospital. I came there on January 15, 1919, and was discharged February 8, 1919. I was there about a month at the hospital awaiting discharge. That is not the hospital where they gave me the hypodermic doses of morphine. That is when I was discharged out of the army. I have been in other hospitals since then, Government hospitals. While I was in these Government hospitals I contracted the dope habit, administered by Government physicians, for the trouble of having been gassed and having tuberculosis. While I was in the Government hospital they did not give me anything to relieve this addiction. I don't remember the exact date I went under Dr. Boyd's treatment. It has [fol. 54] been about a year or year and a half ago. I was taking about ten grains a day when I went to Dr. Boyd. I have been under his treatment about a year. He has cut me down to half a grain a day. When I went to Dr. Boyd I weighed about 100 pounds. My physical condition under Dr. Boyd's treatment has improved a good deal. I weigh 130 pounds. There are some days I don't take that half a grain. I am sick, though. There was some kind of powder that Dr. Boyd gave me while he had my case in charge. I don't remember what it was. He has been giving me this anti acid or powder for the purpose of trying to relieve me of the morphine habit. He has pretty near done it. I know Mr. Frazier, the narcotic agent. I was in Dr. Boyd's office when he came here to inspect Dr. Boyd's place. I didn't know him at that time, though. I was sitting in a chair there and he came in, he and someone else and stopped at the door and looked at me and says, what is your name. I told him. Stood and looked at me again and said come on and tell me what your name is. I said I know it is my name. He says, where do you live at. I says, I live in Chattanooga. He says, I have seen you somewhere else. One word lead toward another, and Dr. Boyd finally told him I have known him practically all his life, that is his name, Mr. Frazier, so that is all that was said. His manner toward me was unpleasant and embarrassing to me. I was born and raised here. I was a hotel keeper before I went to war in Chattanooga. As a result of being gassed and contracting tuberculosis I have been unable to pursue any business here.

Here the Government rested.

Thereupon, there was a motion made to direct a verdict in favor of the defendant at the close of the evidence of the Government, on the following grounds:

1st. That there was no evidence to support the verdict for the Government.

2nd. That the evidence preponderated in favor of defendant's innocence.

3rd. That the effort of the defendant, Dr. A. W. Boyd, was a "good faith proposition" and that he was administering morphine to his

patients in an honest professional undertaking to cure them of morphine habit which curative process was supplemented by an anti-acid remedy and as all the evidence showed that the defendant was acting within the line of his profession in honestly trying to cure the morphine habit and thinking that he had a curative for it and as all the evidence showed that each and every patient had been greatly benefited by the treatment of the defendant, some of the [fol. 55] patients having been cured, that it was the duty of the court to instruct the jury to return a verdict for the defendant.

This motion was overruled by the court as to each and every count in the indictment except the first count. The motion being sustained as to the first count, the jury was given specific instructions to return a verdict for the defendant on this count.

DEFENDANT'S EVIDENCE

Dr. A. W. BOYD, the defendant:

Direct examination by General Whitaker:

I am sixty-four years old. I have been living in Chattanooga thirty-seven years. I have one grown son. I have been a practicing physician thirty-nine years. I have practiced in Chattanooga thirty-seven years. In all of my professional life I never sold or gave away or in any wise used morphine or other narcotics except to use it for the purpose of my profession. I never sold a grain in my life. There has been a research over the entire United States in the last few years to find nature's defense against a poisonous drug. Morphine is a poison administered in more than a half grain. Now, then, the first dose prostrates a person, makes him weak, and he will go along and take possibly a dozen doses before he begins to be satisfied to take it. He does it because it makes him feel worse, but nature establishes a defense against any poison that is put in the system. Now the research has been to find what nature's defense is, why he continues as he continues to take it, and he must increase it or he don't get any effect, because this defense that nature has established destroys it up to a certain point, and he only gets the benefit of what he takes in excess of what nature destroys. Now this defense has been called by some writers as anti bodies, which means nothing except opposed to, of course, but I found that this defense is a poisonous acid. Every tear scalds the skin; that should have been a suggestion that it was acid. Now this acid, while a poison, is a great stimulant; it is a stimulant, and he don't take the morphine for the sake of the morphine, but he takes it to hold that poison up in his system. You take the morphine away from him and he will go to quack doctors and get a worse drug, which is hyocine that holds that poison likely thirty days. In the meantime they have got his money and turned him out as cured; they have [fol. 56] his money. But he is not; he is locked up with a worse

drug. Hyocine makes them thieves, makes a man believe anything belongs to himself. Sometime ago a man came out from my supper table with his hands full of dishes. I says what are you going to do? He says, they are mine. Morphine gets the credit. Morphine don't make a thief; hyocine makes the thief. When the county physician a year and a half ago issued cards in order to lessen the use of morphine to addicts, he would examine them and give them the amount that they should have, and every one had been taking just as much as he allowed them, but they couldn't get only that much. In going back over my prescriptions we knew by that who was dictating the amount, the county physician. The drug store had the card; they couldn't get it filled except at that drug store. It must be just what he had prescribed; no more, no less. Just as soon as the Government did away with his card system if they noticed my prescriptions, they came down there. But if I had wrote it for a grain less, they could not have got it filled, but I would have my patient purloining it and I also gave him medicines against it. In my former treatment I gave them tonics, and built up their health, and I could get the skin clear and get them fat, but they would not quit it, would not reduce. I continued to search, as I said, for this nature's defense, as I said before, which I found to be an acid, and then I began to use the different alkalis to find one that would neutralize that acid. I commenced with bicarbonate of potash. I didn't commence with it. I commenced with a mixture of different alkalis. The mixtures that some of the Government witnesses called 1, 2 and 3 are tonics. I didn't reach it, but when I took the straight bicarbonate of potash and I increased the dose until I got up to ninety grains at a dose, then you never saw such discharges in the world as comes from those patients; discharges from the bowels, skin and kidneys and discharges in women who had not menstruated in seven years. They came from everywhere, by the eyes and nose, it just poured from them. Neutralized acid that had been penned up in the system, first the liver and the larger glands threw it off, and then I would let them rest a few days and I would give them another round, and it would come from other glands. The perspiration was offensive, urine very offensive, the actions from the bowels, I would have to vomit, so offensive and continued on. You would get from women a month, you would get half a dozen variety of discharges, then I would reduce the dose, and then it was you would eliminate by the kidneys and by the skin. The reason for keep-[fol. 57] ing up the dose, according to the prescriptions proved here in the case of Annie Davis, O'Neal, O'Hara and Goodman was for different causes. In Annie Davis' case she was a hyocine fiend, just as crazy as she could be; she hasn't got much sense anyhow. She would see a policeman, she would break and run just as hard as she could, and she would be penned in jail on account of this hyocine. Now by giving her a dose of morphine that would satisfy her and get her to give up this hyocine. When she gave that up she had more mind to control. There is another thing; this acid is a stimulant. Just as that elimination goes on you see the eyes brighten,

you see the change come over them, and they will see things differently and actually want to get well. In the beginning they don't want to get well. A doctor who undertakes to treat one on the street has just got to proceed and work with him in any way he can. They are not able to go into an institution. They were not even able to feed themselves, while they were undergoing treatment, the majority of them. I have taken at least a dozen and fed them and clothed them in order to cure this disease, and I am not very charitable either. But they are the poorest people in the world, this class that I have been treating, people that the doctors had discarded, they wouldn't let them come in their office and these people that I wrote these prescriptions for began to come to me. I sent them first to the city physician. Get out of here, you dope fiends! Ordered them right out; wouldn't even talk to them. The county physician would wait on them if they had money, but they didn't have money. They would come back to me begging. I never suffered as much in my life. In the last year and a half there is ninety patients that had no card, couldn't get a prescription filled that came to me. Now they didn't all continue their treatment. When they would reach a point where I would say, now we are going to reduce, or when this medicine began to purge them heavily, they would come to these quacks, they couldn't get treatment anywhere else, they continued to come back to me, but finally a good many of them found the means of getting the drug. I have a list of the addicts who had no cards. I started and treated at my own expense. I bought the drug and gave them. There are ninety of them, eighteen of which I cured. The eighteen are written in red ink, for the purpose of distinguishing the number cured. Some of them have gone back to it, in a measure; they don't take much. Some of them will get out and drink whiskey and that puts them back, and they do various [fol. 58] things. I treat them for the disease. They are suffering from what you call acidosis. I treat acidosis patients who don't use morphine. It takes a year to cure one of them. They have got to be taken off of starchy food. I tell them not to eat starch, though, and they say, I cannot get anything else. Some of them I cure patients suffering from acid poison after sent to me from the asylum to die. The asylum is full of them suffering from acidosis. It is a poison in every cell of the body. It is produced from improper eating and infection; usually starts from infection of some kind, and then improper eating, and this acid accumulates and continues to accumulate; nature stores it away in the cells of the body and they become nervous wrecks. The bottles referred to by the Government witnesses known as 1, 2 and 3 is merely a tonic that I have been using in the treatment of pellagra for fifteen years. The formula is on the bottle. There is no secret about it. Every doctor knows what it is. It acts on the cells of the body toward elimination. Acts on the liver and kidneys. There is no morphine in it. It is intended to build up the system, a tonic. The morphine habit is a disease which calls for the use of relief, and they find that the morphine gives relief. Nature builds up an anti for any poison. This

man who had tuberculosis of the leg was being infected all the time. There was an absorption of it in his system. As long as that poison is taken into his system he has to fight it off. I gave him medicine to eliminate that poison. That is the medicine I spoke of, this No. 2, that contains soluble iodine. I just mentioned awhile ago that this antidote for this acid poison neutralizes, and while bicarbonate of potash is not a purgative, yet the bowels just pour. It takes about three days after they commence taking it before the bowels stop. It will cure every dope fiend in the United States if they will take it and not eat starchy food, everyone in the United States, I don't care what disease he has got, it will cure him of the dope habit. It may not cure his disease. It will cure this acid condition. George O'Neal is diseased all over. He has got an exposed bone there in his leg, tubercular. I don't claim to cure tubercular bone trouble only by removing it. That is what I advised George O'Neal, and those remedies that I give are merely tonic remedies to stimulate the glands of the system. Frank O'Hara was troubled from various things. He had syphilitic rheumatism; what is called syphilitic rheumatism is usually a rheumatism caused from too much mercury in the treatment of such a tubercular trouble [fol. 59] too. I gave him a tonic to build him up, and gave him this bicarbonate of potash to neutralize the acid so he could reduce his drug, and he did. He hadn't worked for years, and lived in a perfect den, he and his wife. Since they have taken this treatment they have moved out and gone to work and making a decent living. I run about twenty or thirty addicts that I have treated on the general average, not so many now. When you neutralize this acid and they don't have the proper diet or don't take the proper diet, they get extremely weak. They are in a different mind. They have lost their stimulation. They don't feel like they are just a little better than anybody else as the stimulant makes them feel, but they go back to the former days, they think about the things that happened years ago, become dissatisfied and they find the means of getting the morphine and they go and get it. The amount of morphine shown by the Government given to these particular patients that I treated was absolutely necessary in the proper treatment of it, and I never give a patient after the first two or three days more than half what he had been taking, and then I reduced it just as the condition will permit. Those conditions that show that they run the same for nearly a month was, as I told you before, that the county physician had made an allowance of so much. He gave the druggist a card that this patient should have this amount for so many days. If I wrote the prescription for any more or less they wouldn't fill it. I had no will in it so I had to work on the patient and say, here, I don't want you to take this much. That was done so that they might have the necessary amount. They would not fill if it I wrote it for less. It had to be what the doctor had allowed. And then, too, as I said before, there is about fifty per cent of them using this poisonous hyocine, and in order to get them to give that up so they would be in their right mind and not be constantly thrown

in jail for stealing, why I would give them a larger amount even after the card system was done away with, but Annie Davis, of course she was taking forty grains, just takes twenty now, but she is going to take less than that if she comes to me. The enforcement of the Harrison Anti Narcotic Act has so frightened the doctors here that they absolutely won't treat them at all. That is the reason I had so many patients. I have talked to the doctors, I have gone to doctors and told them of this discovery of mine. I said, let's join together and cure these people. My discovery was that nature's defense against morphine was a poisonous acid. I have not been able to determine just what that acid is, but I have a chemist [fol. 60] working on it now analyzing these various discharges from the perspiration and urine and the bowels. In treating these addicts I have tried to treat them from a scientific professional point of view absolutely, as many as I could, without any regard for compensation. They never had anything to compensate with. My treatment of Annie Davis was for the purpose of relieving her of her addiction and to get her to give up her poisonous hyocine that was making her a thief. I did not give to her, O'Hara, Russell Goodman or O'Neal any morphine for the purpose simply of satisfying their craving on account of their being addicts. The Davis woman, when she ran low of her drug, she would have convulsions and fits, had one in my office once, a very unpleasant thing. I cannot think of the name of the chemist who is analyzing this poison. He is a physician and chemist. He came to me and had seen the results of this treatment and came to me and asked if I had had an analysis made and asked me if I had any objection to his making an analysis or not. I said I did not. He is a local man. He came to me. He just came back from this clinic and wanted to make an analysis to find what was produced from the union of this alkali with the acids of the body. He asked me if I had ever had it done. I said, no. He wanted to know if I had any objection to his making this analysis. I said no. I will get his name. He is a doctor that does not practice.

Cross-examination by Mr. Taylor:

I think Dr. Clary is his name. It has been several weeks ago that I saw him. He came into my office about this. He asked me about this treatment and what it was. He asked me what alkali I was using. I told Mr. Carlysle I was treating these patients and he asked me what I was using. He is a doctor. He said he was going to make an analysis, and asked me if I had had it analyzed. The only other research work I have done in connection with this is observation. I first used a combination of potash and —, but I couldn't get enough to produce results, and then I started with this potash and climbed up until I was giving ninety grains to a dose. That is a heaping teaspoonful of bicarbonate of potash. The physiological effect of that is to neutralize the acid. It acts on the secretions, on the kidneys, but does not act as a purgative in itself. I don't know

what that acid is that is built up. I am of opinion that it is acetic acid. That is the same acid that is found in wood. Tanic acid is in wood but acetic is also. I told you before that I don't know what [fol. 61] it is, but that it was an acid that could be neutralized with an alkali. I don't know whether any acid can be neutralized in any alkali. I don't know whether it could or not when it is in the system. It has got to be an alkali you can give in enormous doses to reach its cause; little doses don't do it. My theory is that the introduction of morphine, its being an alkali, into the system, because the morphine is a posion, builds up an acid condition to neutralize that to keep it from killing a man; whether under just that proposition or not, that is the result, that is the condition, and it would kill him. Morphine isn't found in any quantity in the human body originally. It is a posion in a poisonous dose. That is true of any poison. Any quantity of morphine is a poison. The minute that is introduced nature undertakes to prevent the harmful effects of it by generating an opposite to it. This potash is to hold it in the middle of the road. When you withdraw the morphine, the alkali does not throw down the opponent. It may stop accumulating the opponent, but it doesn't throw it off. I have treated thousands of cases of acid condition of the system, or even those of men where they never took a dose of morphine and nature does not throw it off. I am talking about acid, not morphine acid, and there is no peristalisis at all, that is the reason the bowels don't act, not so much on account of the morphine, but the acid condition of the system, and when you neutralize this acid the system relaxes. You can see a change in the expression. I would be only too glad to let you see a patient after he has taken a treatment. Nature throws off some of the acid when the morphine is withdrawn, produces the diarrhea, but if you will give him this alkali he won't have it, the diarrhea, only natural discharge of this neutralized product. I cause this acid to be neutralized, then he has lost this stimulant, don't you see; he may take his morphine to get his kick, as he calls it, he gets no kick because this kick comes from the acid poison, and just as soon as the neutralization throws off this, he will take less and less. In a way this bicarbonate of potash is absorbed by the system. It is assimilated. After that acid defensive wall was broken down by the bicarbonate of potash in a man taking ten grains a day, it has come pretty nearly knocking some of them. I had to make artificial respiration on one patient that tried to take the third dose. I caution them they cannot take it, and they have tried to take the big dose. This fellow Pinson had to be carried in two or three times. I don't know how much acid there is in a man's system who is taking half a grain of [fol. 62] morphine a day. Any man could take that much morphine without any ill effects. It wouldn't be safe to withdraw the morphine from Pinson. He has got his nervous system accustomed to this condition twenty years. I can get rid of the half a grain of morphine he has been taking. He thinks he is taking half a grain when he is only taking a quarter. I am going to take away the quarter right away. He has hemorrhage of the lungs, and I have to deal with him very carefully, and I am going to take it away from

him. He is not related to me. He paid me something when he had something. He was a soldier. He really has no money. He hasn't got his check for five or six months. I don't get any revenue. I never made one single dollar by the dope route. I treat pellagra. I have lots of them. I expect I have twenty-five or thirty over the country, some at Knoxville, some all over Alabama. I am a pellagra specialist. I use Nos. 1, 2 and 3 for pellagra. It is a combination of drugs that is successful. They come from Knoxville down here because I cure them. They can buy it at the drug store if they have ordered it. That is not all the treatment. There is a local application in pellagra. I don't specialize in morphine. These people were here. They were a part of our citizenship, they were having hyoscine fits and becoming thiefs. I could not pick up a paper they were not being arrested, and thrown in jail. For years I have been treating them so when they were thrown in jail there would be a chance to get them off this drug. I have not lost my conscience entirely. These people were a part of our citizenship, they couldn't help themselves, they couldn't get that themselves, they had no money to go to an institution and the doctors wouldn't treat them. I mean the general profession had thrown them down and I had been giving some thought to this as I sort of drifted away from the general practice. I am not doing a general practice. The general practice did not drift away from me. I have always had all I could do. I used to be a surgeon, but I have given it up. I haven't forgotten how. I know Annie Davis. She said she has been with me twenty-two years. She has come to me off and on for a year and a half, I guess I don't know whether she came to me exclusively. She has not come to me continuously, and I have always tried, as I was perfectly willing to treat her, but I haven't confidence in her efforts to get away from it. I have not given her hundreds of prescriptions. I don't know how many. I have got them all on file. I have a copy of every prescription I ever made. The reason I didn't show them [fol. 63] to the narcotic agent, he told me he would be back next week, and he didn't come. I showed him everything I had. I showed him part of my prescriptions. I showed him part of the duplicates. I didn't suppose he wanted to go throught it all. I did not buy 36,000 tablets during the five months period. I bought about 17,000 tablets during the period from May to September 30th. I had ninety patients. I got 3,600 half grain tablets from the 2nd day of May to the 30th day of September, and 32,700 half grain tablets up to September 9th, alleged in the indictment as the last day. I was not administering morphine to anybody except addicts I was treating. I was treating Annie Davis, but I gave her prescriptions. I gave her a dose of medicine when she had a fit in the office. I was writing prescriptions for her. I gave her the black medicine she testified about taking out of a bottle. I was treating her. I wrote her on August 13th, 40 grains, August 2, 48 grains, August 9, 48 grains. That is when I was trying to get her to get off of this hyocine, this drug that made her crazy. She was continually taking it, and others did. I had a harder time to get them

to cut out the hyocine than morphine. She was using all the morphine she could get. At the time these perscriptions were given, why she was being thrown in jail, and in a few days she was put in jail again and she came to me begging for help and relief. If she didn't take that she would take more hyocine. I knew when I gave her these prescriptions she would get 40 grains of morphine, and if I didn't write it for that she couldn't get any. If she didn't get any she would have these fits and might have died. There was no chance to treat her. If I hadn't given her any morphine and no one else had I think she would die. She wouldn't die, but would have fits. There has been five died in the county jail.

Q. From the first day of July to the 15th day of October, you prescribed to a total of 73 patients and wrote 802 prescriptions, calling for a total of 25,678 grains, in addition to what you administered in your office, didn't you?

A. That shows what a condition we had, and compare the condition today since I have been treating them with the condition then, and you will see that it was worth while. We don't have any more arrests for vagrancy, we don't have any more thiefs on account of hyocine fits. I am satisfied that the prescriptions you presented to me are mine. I am not responsible for the addicts. I never had one occur in my practice. I have not a memorandum of those I was prescribing for during this period, but those I was [fol. 64] treating there. I treated ninety for whom I did not write prescriptions. I cured about eighteen out of that. I averaged twenty or thirty at a time part of the time, not all the time, an average of twenty or thirty. I expect I prescribed for that many more in addition to those I administered to, twenty or thirty more, but not at one time. I was prescribing for seventy-three altogether. I have had more than ninety that had been using it for years, and I didn't write a prescription for anybody except badly diseased, badly diseased people, such as Annie Davis. She has heart trouble and asthma. I have seen her just gasp for breath and for morphine. Russell Goodman had some bowel trouble, I forget what it is now. I describe it on the prescriptions as incurable cardiac asthma. Cardiac means heart and lungs both. He had bowel trouble too. I specified I was giving him morphine for incurable cardiac asthma. I told the truth on the prescription, that was the reason for which he took this drug. When a man comes to me wanting a prescription, I say, what is the trouble, what are you taking it for, and examine and see, and if he has been using it for ten or fifteen years, he has got to have treatment, have some treatment until he can be gotten off of it. Back at that time I hadn't made this discovery of neutralizing this acid and I treated them the best way I could. I have prescribed for many people that I didn't want to prescribe for, even though they paid me. Russell Goodman never paid me a cent in his life. I heard he was in the penitentiary. I was not called by Russell Goodman when he was over here and declined to testify that I had administered morphine to him. I did not come into the court room here and talk to his attorney and decline to testify.

I never declined to testify in any case that I had any recollection of. I did not came up here in his trial and no trial that I know of. This is the first time I was ever tried for anything. I was giving this man Goodman morphine for cardiac asthma, as I stated on the prescription, to prevent the attacks of asthma, to relieve him when he had them, and he was instructed to take it to relieve these attacks. I don't think it has any curative property in the treatment of that disease, but it relieves the condition. When I gave him on the 11th day of August 24 grains of morphine, on the 15th of August 24 grains and on the 7th of August 24 grains of morphine, I did not give it to him exactly to use when he was stricken when an attack of asthma alone. He had got this acid condition of his system. The very minute he reduced his maximum amount he was in severe pain all over, and until [fol. 65] that acid could be gotten out of his system, and I didn't know how to get it out at that time, he had to continue his morphine. A big dose didn't hurt him any more than a little one and didn't do him any more good than a little one. About a half a grain is the maximum quantity that can be assimilated by a normal person without producing death. In an addict it is destroyed by this defense of nature, that is what I told you. Destroy nature's defense and he will cut down his drug just as you destroy the defense. I was not giving him the destructive then. I learned that since. I have learned since August 23, 1923, that this was an acid condition. In dispensing or prescribing the morphine it was given to relieve his condition, this asthma and the pain that he would get on account of the acid in his system when he reduced the dose. I knew it was something then. When he got without morphine, these attacks of asthma and heart trouble would come on. I saw him when I didn't think he would live until I could give him a dose. It was the only dose I ever gave him in my life. He was in jail and came to my office. The 34 grains I gave George O'Neal on August 26th I gave him to relieve his pain until he could have that operation performed. Each time he came to my office I insisted on an operation. I offered to operate on him, but he said I have got to work, got no money, got a mother to take care of. He was working a little bit. I don't know whether he was supporting his mother or not. He did not pay me. I did not continue my treatment of O'Neal very long. He came here from Cleveland, and he was here awhile and then went to Cleveland and then he came back here. I knew morphine wouldn't cure his osteomalitis. He was infected from the infection of the disease. Morphine would not prevent the elimination if he took the drug I gave him. He has gained about ten or fifteen pounds, and I gave him other drugs. When he first came to me I did not know that this potash would do this work. In August, 1923, I did not know that this would do the work. I made that discovery in Jim Pinson's case. I was feeding him on malted milk and eggs and the idea came to me that he is in the proper condition to try this out, and I commenced with a mixed alkali first, and then I resorted to the bicarbonate of potash in

enormous doses and got the result, still tried to take his big doses and he had to be carried home a few times, and I asked him to come to me and to stay in my office and not go out. I gave him a grain and a half and he said he couldn't sleep, was taking bromide to make him sleep. I asked him to stay in my office and I gave [fol. 66] him a grain and a half and he slept all day. The next day a grain and the next day a half grain, and then I told him, and he has never taken more than a half grain since. I was giving him that because he had been accustomed to taking it, and I didn't know then I could cut it down so rapidly, but I found I could. It was about three months ago that I got to that half grain. I can get the other quarter grain away. He has hemorrhage of the lungs and I thought it would be better for him to continue a little bit longer, until he gets in better physical condition. I did not give him anything for tuberculosis. I gave him this tonic treatment. I don't treat morphine. I treat a patient who is unfortunate enough to use morphine. I don't use morphine in my general practice. I am not responsible for the morphine habit, never produced one in my life, never had one to occur in my office or practice. I practiced thirty nine years and made $250,000 and gave it away, and I am not worth anything now. I gave it away to these unfortunate addicts, a good deal of money. During the period from May to September, 1923, I cured a number of persons addicted to the use of narcotic drugs. In all cases I reduced the quantity of drug. I don't know what percentage of those were cured definitely; about eighteen were discharged cured. They were cured if I could have kept them under my control, but they get out and get drunk and take it again. They were not taking morphine when I discharged them, they were entirely removed, eighteen of those. At the beginning of May, 1923, there were ninety people here who were not getting the prescription and not entitled to a prescription. I was treating during that period from May to September as many as ninety, coming and going. Some of them would be treated and when the treatment did not ease their suffering they quit, and those who continued of course went throught with it. When a man came in taking ten grains a day I never gave him more than half of that to start with. I cut him down fifty per cent right on the start, and then of course if he couldn't take his medicine continually, if my treament hurt him, I would have to increase him a dose or two. I would vary him and cut him as quick as I could, but as low a dose as I could, small a dose as I could. I would reduce him. I had no set rule about that, some of them would stand more than others, and after he got this elimination started, why then I would cut right down with him, and if anything should occur, I would go back a little and watch him along and try to keep him from knowing how much he was taking. You see I had this to contend with, to hold my patient from going some- [fol. 67] wheres else and taking drugs, and by letting him know that I wanted to given him relief and could hold him that way. It is not like I had complete control of him. I took one patient

that I did have locked up that had gone through with the treatment and was ready to quit and I only gave her a grain and a half after she came into that room. She left in ten days feeling as bad as she could be. But she had been treated for three months before she went in there by me. I had gotten her down to half a grain at a dose before I locked her up, but she would take two, sometimes three doses a day; taking a grain, maybe a grain and a half a day when I locked her up. In ten day I had her out. I step them down just as fast as their condition allowed. You see this elimination was what I was after. Those in May, June and July, before I made this discovery, I would step them down just according to the condition of the patient. There are two or three drugs. The poisonous hyocine they will resort to. I would have to reduce them according to their condition and I would cut off those. I am prescribing them two grains a week is what I am giving them now. I have no record of the reduction of those in May, June and July. So far as that is concerned, a little reduction don't make any difference in their treatment. You can reduce one ten grains at a time after he has gone through certain treatment better than you can reduce him one grain a week. My theory was to take the morphine away from him just as the condition would permit, and that is what I did. I would examine him every two or three days. In the majority of cases you could withdraw if you wanted to start on the gradual reduction. That is not what I wanted to do altogether. The average patient would give up a grain a week without knowing, if he was treated properly, but a man treating as many patients as I did, it isn't like a doctor who had just a few under his control, but I had no assistance from anybody. They crowd in on me there, and I would prescribe it as I thought their condition required. I have not been convicted or fined in the city court a single time. I have not been fined for pleading guilty, and the trouble was in an apartment upstairs that I had nothing to do with. There was trouble in a rooming house upstairs, and I had this girl that was sleeping in the back part of the house where my office is, doors locked and every thing. She was an addict but had been cured. She was not an addict then. They called her Pete. Pete is out here in the hall now. I took her out of the gutter and cured her of the dope habit. She had [fol. 68] not menstruated in nine years, and now when she menstruates she takes a dose. I said on direct examination my average was something like twenty patients from May 1st to September 9th. During the period from July 1st to October 15th I was prescribing for seventy-three personally.

Q. Now, Doctor, explain to the jury how it was that your average twenty patients got 32,000 half grains from May 1st to September and the ones that you prescribed for only got 25,678 half grain tablets, when there were seventy-three of them and twenty patients whom you administered to?

Mr. Foust: I think that proof comes under the count that has been quashed.

The Court: It is cross examination. I will let him answer. It is competent under the idea which makes all this testimony competent with reference to the amount of morphine in his hands, and whatever it may be worth to the jury in determining the question of good faith of this man in administering morphine.

Q. Doctor, explain to the jury why you gave twenty people 32,000 of these tablets and in a longer period only prescribed for seventy-three people 25,000 tablets?

A. That estimate was only an estimate. I use from one to two bottles, 50 grains, two is as much as I ever use in a day on all the patients that I treated where I administered it, and they were people who were taking enormous amounts when they came to me and the only way I could get them to take treatment was to give them enough so that they would retain the medicine, and each patient had to be judged according to his condition at the time. My number of patients is decreasing now. During the period from May to September they decreased during that time or remained about the same. My quantity of morphine reduced since I have got the patients to a point where they are quitting. Annie Davis has been getting from twenty to thirty grains, down to twenty grains in the last two months. Annie Davis was a patient that was hard to control, used everything. I wanted to get rid of her. The reason I didn't stop her dope I didn't want her to die. I am reducing her now and giving her this bicarbonate of potash. The reason I didn't do it then, she had to have it to get her system in condition by this elimination. I was using elimination back of August. I have been using it six months. Pinson was the first [fol. 69] patient on which I tried it, on a patient using dope. He had been to me a good while before I gave him that. When he came to me he was taking hyocine and bromidium and everything. When you first commence treating a patient to get him ready, you cannot cut it right off then. The trouble is in treating these addicts on the street, you have to keep their confidence. I want to treat a man after I take him to treat him. I wanted to treat this man because he was a soldier and because it was my duty to get him back to health, and I did so and helped him as best I could. I don't know how it came about that I bought my morphine at three different places. I had no object in doing that.

Q. Didn't it come about in this way: didn't the drug stores commence refusing to fill your prescriptions and the wholesale men complaining about the quantity you were buying and threatening to take it up with the authorities and see why you ought to have that much morphine or not, and thereafter, beginning in May, you commenced with Miller Brothers, R. G. Miller, etc., Fritz & Weil, etc., on along down just like a man borrowing money from a bank, got so much at one bank, couldn't get any more, and go over to another bank?

A. There hasn't been the slightest complaint to me from any source.

Q. Explain to the jury why it was since on July 14th you bought

12 100 half grain tablets, that is 12 bottles with 100 half grains each, why it was necessary to go back on July 15th and buy the same quantity in your possession in forty eight hours, twenty-four bottles, each containing 100 half grain morphine tablets; what on earth were you doing with that many in forty-eight hours?

A. I never had more than one bottle in my office at a time. It was put in the safe at the drug store, and one bottle is all I ever took at a time.

There is an error; I never went back to the very same place the next day and took twelve more bottles, and I never got the twelve when I ordered them.

Q. On July 27th your order form shows that you went to R. J. Miller and got 1,000 of these tablets, and on the next day, the same day, July 27th, the same day, you went around to Miller Brothers and got some?

A. I will tell you. This order was put in there, and as I told you, I never took out but one at a time, and they couldn't fill with the kind that I wanted so I made an order at another place to get the kind I wanted, and this was delivered to me later.

[fol. 70] At Miller Brothers, on the 14th and 15th, he didn't have the kind, if it was all the same place, that I wanted, and that order stood. The other order on the next day was at the other Miller's.

Q. Oh, no, it was not; 14th and 15th, both R. J. Miller's. Now on July 27th you went to both Millers, you got a dozen one place and two another, fourteen bottles?

A. That was because of the kind that I wanted.

I used Sharp and Dhome's. I never expressed that in a single order form, but it is understood by whoever I buy it from. It isn't necessary to put it in the order. There is no place for it. I never used a dozen one hundred grain bottles in four days in treating twenty patients. The reason for the order on June 10th of a dozen from R. J. Miller and on the 14th of a dozen from the other Miller came about in that way, and he could supply what he had and that order would stand until he got what I wanted. I didn't take that out of his place, and never kept but one bottle.

Q. Now on June 14th you go to Miller Brothers and order a dozen 100 tablet bottles, and on the 19th you go to Millers and get three 100 tablet bottles, and then on the 19th you go to the same place, the very next day, and on the 20th you go and get a thousand. Explain how you were using so many in that length of time?

A. The three could have been used and the dozen remained there.

Q. All right, four days later, on the 25th, you go to R. J. Millers and get a thousand; why would you go back there five days later and get a thousand when you had not used up a thousand at Miller Brothers?

A. I don't know how those things came, because I never kept but one bottle in my place at a time.

Q. And then on the 27th, after getting at R. J. Miller's why did you go, two days later, and get another 1,000, and why did you go on July 3rd, but four days later, and on the 17th, and seven days

later on the 14th, and one day later on the 15th and get 1,000 each time, and then six days later, on the 21st, and on the 25th and the 27th and again on the 27th at another place, and then on August 1st, August 2, 5, 9, 14, 19 and 28 and get a thousand each time? What were you doing with it?

A. I never got any such amount that way.

I never got the amount at that time. But along at that time I had an enormous number of patients coming in there that I was treating, and every grain that went out of there was administered by [fol. 71] me to a patient unless somebody stole it. I never made the claim of anybody stealing it. I know they could have stolen but one bottle at a time. But there was one bottle stolen two or three times. I didn't say I didn't get it. I never used over two bottles in any one day, unless it was just a very few times, and then I had some patients, more patients, than I had had before. In the course of the practice of medicine only, I wouldn't use one bottle containing 100 half grain tablets in a year. I was using it for these addicts, who were hyocine users and taking enormous amounts of morphine. Men came to my office taking 40 grains a day. I was treating the patient to cure some disease, and I had to relieve his condition until this treatment could take effect, and every single patient that I treated has been improved. Every single prescription that I have written for a patient, they have improved, gained in flesh from ten to fifty pounds, every one of them. The prescription you hand me is for a woman, Hazel Will, has epilepsy and T. B., dated 7/12; 12th day of July, 1923. I gave her thirty grains.

Q. Here is one, the same woman, the same month, six days earlier, how many grains did you give her in that one, and here is one on the—I don't know whether it is the 11th, filled on October 13th?

A. That woman is——

Q. Here is July 30th, Hazel Will?

A. She is fifty per cent better.

Q. Thirty grains again, same woman, August 16th, 30 grains again, same woman on May 12th, 30 grains again. That is reducing her fast?

A. You cannot reduce her beyond that; her condition won't permit it, and she is improved. That is a reduction to what she was taking when she came to me.

The prescription you hand me is for one Stevens, Lula Stevens. This one is D. W. Stevens, 73 years old. I don't think it is her husband. I cannot tell that off hand. D. W. Stevens got 32 grains on this one. He had suffered from gun shot, not recent wounds. I don't know how long ago. I was treating him. He was seventy-three years old, an addict. He will take it as long as he lives. There isn't a man in Chattanooga that tries to treat them except myself, because they are not going to be bothered. And it is only a matter of humanity that I stopped myself issuing prescriptions. I have been persecuted by the public, local officers and everybody, and yet I tried to help them, and if you find one not improved I will change my plea, improved in the amount of morphine. It doesn't matter; [fol. 72] it isn't the amount of morphine; it is their condition. I

am going to do like the other physicians and put the responsibility on the city. I have refused to write for these dope addicts. I refused time after time, sent them to the city physician; the county physician would write them if they had money, but they had no money and then they would come back. It was necessary for somebody to write them because of their physical condition. I was treating their physical condition. I treated them for everything. I treated one because of the water traveling down the legs. Morphine stops the spasmodic contraction in that caused by the inflammation. I used permanganate of potash in that case. I give that just as often as they need it.

Q. If you treated it as long as they needed it and stopped it, why was it necessary to continue the morphine?

A. I didn't say they had been cured. The bladder had become thickened from a gonorrhea years ago and it would not hold but a few teaspoonfu*l*s. They were taking morphine and their system subjected to it, and they couldn't live without it. I treated them for the disease too.

Redirect examination by General Whitaker:

For years I have been trying to get a remedy for this disease that required this enormous amount of morphine. I see a doctor over there who is a personal friend of mine; he knows that I have been making this research. I absolutely regarded it as a part of my professional duty to write these prescriptions in aid of my treatment for the morphine habit. I cut them down half of the amount they were taking when they came to me and personally administered it. I want to correct that. If his condition was such that he could not exist, I would again increase. But I never took his word for it. That is why I administered it personally. That is not why I gave prescriptions. I couldn't cut down the prescriptions half because I wouldn't see the patient often. When I am administering it myself he returns and I see him. The party with the prescription goes away and I don't see them.

Recross-examination by Mr. Taylor:

I would see them when they came back for another prescription. I reduced it after I was allowed to reduce it by the county physician's card system, just as the patient's condition would permit.

[fol. 73] Dr. Cooper Holtzclaw, a witness for the defendant:

Direct examination by General Whitaker:

I have been a physician and surgeon in Chattanooga for forty odd years. Morphinism is both a habit and a disease. It commences with a habit and winds up as a disease. It is a disease very difficult in treatment. Some people can take opium for awhile and then they can quit it, just exactly like whiskey, you can take it or let

it alone, but some people unfortunately are constituted where they start to taking whiskey they cannot quit it, and by the same token when starting to take opium they cannot quit it. They start to take opium unfortunately for some disease that they have, usually a painful disease, like cancer, like inflammation of the bladder, like a dozen different diseases where the pain is intense and where they have not thereafter been able to find the method of relieving these pains they commence taking the opium or morphine or some of the preparations of opium to relieve them of the intense pain where they can get quiet, ease and comfort, and it — the most powerful drug where you are suffering, racked with pain, cannot sleep, nervous and restless and every nerve in the body cries out with pain, a dose of morphine or opium lulls all these pains into quiet and comfort, and one who has suffered the agonies and tortures of the damned a half hour before, sleeps, as you might say; they are free of pain, free of care, free of everything, they are perfectly comfortable, and one cannot hardly blame a poor devil who has suffered, who is suffering intensely from taking a little something to ease him of this pain. I have taken it myself quite a good many times and it has produced relief. Fortunately I could throw off the condition; a great many people cannot. It is the same way, as I say, taking a drink of whiskey; some people are born constituted, just born in them, that they haven't the resistance to keep from it, and the habit is established in a few days or a few weeks, then it becomes a disease, unfortunately, and I fully agree with the steps that are being taken; the start is good, but we have only begun yet, in the matter of treatment of these unfortunates, these dope fiends, as they are commonly called now; addicts. We have just started in now, we are groping yet, to my mind, and we yet don't hardly know what to do. Now if you want my idea about it. I have no criticism to make. I am a citizen of the United States, thank God, and my forebears were born [fol. 74] here, and I am for the interest of the United States, first, last and all the time, forever and forever, amen; but these poor unfortunates, even our Government, these United States, states, counties and cities have not given these poor people the proper recognition and the proper treatment yet. Now far be it from me that I hurt the feelings of lawyers and learned judges and statesmen and politicians, but they will build up here a million and a half dollars for a building, and they will take a man up here to this magnificient palace where he can have a trial, when a log hut would be good enough for the whole push. The birds have nests and the animals have holes, but the son of man has no place to lay his head like these poor unfortunates. But you shoot a man in the back or steal four dollars from him, and we have a magnificent mansion to throw these characters into, but this poor devil you kick him out. However, that is the way I feel about the thing. So these poor unfortunates ought to be taken care of. There ought to be some method, manner or means of putting him in a hospital and treating them just exactly like we do the insane. We have started out now; we are groping yet. We will eventually find it, we will eventually get to it, we

are trying hard, and the medical profession, I am proud to say, are helping in every way, form and fashion. Some of the doctors have been prescribing on the outside more morphine and opiates than they are allowed to do and more than their consciences ought to let them, and they are arrested and indicted for it, and should be indicted for it where they go over, above and beyond what is proper for them. The State, I say should regulate it, and the state should appoint authorities, medical authorities, to examine into these cases, and then let them judge as to how much opiates they should have and when they should have it, and to see that they are put under proper treatment to cure them of it, if it is possible to be cured. In my professional opinion, if a doctor genuinely believes that he has a remedy and a cure for this opium habit, it is professional to apply it in the effort to relieve these addicts. Those things have been done, as, for instance, in the so-called Keeley cure, for the whiskey and opium habit. That did a great deal of good. Keeley got an idea that he could cure these cases, and he did cure lots of them, hundreds of them and thousands of them, and Keeley's idea has gone through. Now we are studying these cases, this condition, all the time. We find that dopes and old whiskey heads, as we call it, we find that [fol. 75] when they take whiskey and opium for a long while that they get an acid condition in the system, and this acid poisons the system to a great extent. If we can get rid of the poisons then they don't crave opiates so much, then they have got a better chance to build them up and treat for the disease. As I say, the system becomes acid, and the secretions become acid, the urine, the gastric secretions, all become too acid. Any alkali will neutralize the acids and put the system in a condition so that they can be more readily and effectively cured and treated. Dr. Boyd has submitted to me his method of treatment of these morphine addicts, and I consider it a sound, sane and successful treatment of the trouble. He told me it was bicarbonate of potash. That is all right. And so any alkali, soda, bicarbonate of potash. His is very good, bicarbonate of potash. All kinds of tonic measures are beneficial and necessary. In the treatment of this morphine trouble it is ethical and proper and professional to gradually reduce the morphine. By gradual reduction is the method I observe. I treat very few of them, and practically none, you might say, but in days past the method I always used, as I mentioned here the other day, was to put so many doses of morphine, say a quarter of a grain at a dose, a teaspoonful dose, put it in a bottle, say an eight ounce bottle. The first teaspoonful taken out contains a quarter of a grain of morphine. When that quarter of a grain is taken out, a teaspoonful of water is added to that bottle; that, of course, makes it less in quantity of morphine. So finally it gets less and less to such small quantities that the patient never realizes he is being taken off the morphine. I have cured quite a number of cases that way. I have known Dr. Boyd since 1878. I was present when he graduated at Shank Seminary. He was a small boy from up above there, and I was a druggist in Dalton, Georgia in 1878. We have been quite intimate, as you might say, since he

has been a physician in Chattanooga. I think I know his general character. It is very good indeed both as a citizen and as a physician.

Cross-examination by Mr. Taylor:

Dr. Boyd, in detailing the treatment which he was using to treat these narcotic addicts, told me he was by the alkali method. He told me that he was using bicarbonate of potash. I recognized it was this method or knew of the method anyway for a number of years, an alkaline method, because, as I said, the secretions are acid, and [fol. 76] we need an alkali to neutralize this acid so that the system won't crave these stimulants. I found then his idea was gradual reduction of morphine. The use by a physician in the gradual reduction treatment who had, in the period between May 2nd and September 9th used in personal administrations on a total of ninety patients averaging twenty patients at a time, 32,700 half grain tablets would depend on how much these people had been taking in the beginning. Some people take a heavy quantity of it. It is a mooted question now as to whether only a certain amount can ever be assimilated. I think the latest theory about it is that it acts as a kind of food eventually, but my idea has always been that only a certain quantity is assimilated and the balance excreted. That is why the acid is built up, to counteract. If the system of an addict absorbed and assimilated more than the normal dose, it would result in death. Any quantity taken by an addict in excess of what could be taken by a non-addict is simply waste, it is thrown off. In the beginning a physician treating by reduction method could take from the patient all of the narcotic ordinarily consumed by the patient except that amount that would give the narcotic effect for a non addict. I would reduce it, in the first place to half a grain at a dose, if possible. One couldn't say whether that would be possible in every case, because the cases are not the same. Some people I have known about take one and two and three grains a day for forty years and keep just about the same quantity. Others just keep taking right along the same way about drinking whiskey. I have known people to drink whiskey for forty years, take one to half a dozen drinks a day, the same people have to keep on taking. I hardly think that when you get a man drunk like that you can keep him drunk on a tablespoonful every two or three hours. It would take more than that to keep him up. Morphine does not have a cumulative effect. The thing is like this, some people, as I say, can keep on at the same quantity, and others have to have a little bit more every day, so as to get the effect originally had. They don't get any additional effect. They may take a grain today and feel perfectly all right. Tomorrow he takes a grain and it doesn't bring him up to his proper feeling and he takes a grain and a half and goes on for a week. That is because nature, in guarding itself against the effects of a deadly poison, is generating within its system an anti or an acid condition.

[fol. 77] Q. Now, then, assuming that in every case it would be impossible to reduce immediately without the addition of other

drugs, the patient down to the original half grain dose, say that could be done, if, in addition to that half grain dose you would introduce some alkali which would meet that acid condition, then that morphine would be in a position to give the system the full effect?

A. Precisely.

I should think that in using the bicarbonate of potash reduction a physician could administer a half grain of morphine in the beginning and accompany it by a maximum dose of bicarbonate of potash, depending on the quantity of morphine theretofore taken by the patient, and that that would be the first step. I took a bottle and made a solution of morphine, providing for teaspoonful doses, each one of those teaspoonful doses originally containing half a grain, or greater.

Q. Well, we will say half a grain. You give that bottle to the patient with instructions to take three doses, depending on the quantity and the regularity with which he had taken it and the intervals that had theretofore been customary. He takes his first dose in the morning and the next one after lunch and the third one before retiring. When he takes a teaspoonful out he puts in a teaspoonful of water. His bottle is always full, but gradually growing weaker by the addition of water, so that when he has gone on and on and on until the bottle would have been empty if nothing had been added to it, he has a solution that has practically no morphine?

A. Practically none. In the meanwhile, however, that patient will have been put on alkali and tonic treatment, proper dietary.

Then he would be given advice about associates and environment and how to improve his perspective and good books to read, anything tending to lift him up.

Q. Assume a man taking twenty grains per day, a large portion of which has been wasted and not assimilated, for the reason stated; you reduce him to half a grain; now how long would it require to get him down to nothing by your system?

A. Well, that depends.

The amount of morphine depends a good deal on the individual patients. It is owing to the disease, or the condition for which he originally commenced to take this has been removed or ameliorated or helped or gotten rid of.

It would be the bounden duty of the physician and proper before undertaking to remove the symptom or the narcotism which had [fol. 78] originally commenced on account of some painful disease, before he could finally relieve narcotism, to strike at the particular cause of it and try to relieve it. Syphilitic rheumatism is curable. Ordinarily syphilis and syphilitic rheumatism is one of the most easily curable diseases known to the profession. But I will say this, that with an addict it is very much harder to cure with a person who is all run down by the constant use of morphia and other drugs, it is much harder to cure than one not run down. It cannot be cured until some measures are taken to cure the affliction. With these addicts it is a very, very hard thing to get the system strong enough to throw off the disease. Morphine interferes with nature's

desire of eliminating the poisons and bringing the system back to the normal condition. That is the tendency of every person, of every one, the tendency is for nature to throw that off, to throw off all disease and to bring it back to normal; to throw it off through the kidneys, bowels, all the eliminators. Morphine has a tendency to lock up those secretions. Morphine has no curative properties; it is a symptomatic treatment. In gun shot wounds where you want the bowels quiet, you use morphine for that to let nature cure the wound, but the morphine has nothing to do with the cure. It is just like putting a splint on the leg; just holds it still while nature does the work. Morphine is counter indicated in any disease, even like a broken leg or gun shot, except to keep the patient quiet because you want the bowels open. That would be true in a tubercular condition of the bones. Many cases of morphinism and addicts have been produced by broken limbs for the simple reason they were never set perfectly and accurately; and those cases give pain. Fortunately, with the *exray* and other methods we have of reducing these fractures we hardly ever have an addict after fractures. We put the limbs back in the natural, normal position, and they don't have pain. It is the duty of the surgeon and doctor to *exray* the patient to see and ascertain where the trouble is, and as soon as found out to remove the trouble by mechanical means. I doubt it very materially that any ordinary addict suffering with any disease or not suffering from any other disease, ever be cured while the narcotic drug was placed in his hands in quantities of thirty, forty and forty-eight grains in his unrestricted control.

Q. Would there be any condition, except in advanced age, or advanced cancer or advanced tuberculosis, where the patient was simply dying and the morphine was introduced to keep down the last pain, [fol. 79] would there be any condition where in the treatment of narcotism a physician in the legitimate practice, discharging his obligation to society, would he be justified in placing in his hands from week to week prescriptions calling for thirty, forty, twenty grains of morphine, and by the addition or the recommendation to the patient to take bicarbonate of potash, a cure could be legitimately expected?

A. Well, the cause there would have to be removed, the cause which prompted the commencement of the opiate, the cause would have to be removed there and the treatment, alkaline treatment and tonic treatment would have to be introduced in order to break up, in order to stop the morphinism.

That would be done after the withdrawal down to the minimum quantity. And that is the duty of parties first who take these cases in hand, should make a study of the treatment of these cases. I did not. But then that is the duty of all those who take these cases, is to remove the cause of the disease as much as possible, and if it is a splinter somewhere that is producing pain, they must remove the splinter, and then they must go to work and by alkalization and the secretions of the body, and by proper tonic treatment that would build up the individual case and the gradual reduction of the opiates. Morphine is indicated in a case of cardiac asthma. It gives tem-

porary relief. It has no curative properties, gives temporary relief until you can find out. In these cases of cardiac asthma, the patients feel like the breath is going to leave every minute, and they gasp like a fish out of water. The treatment of cardiac asthma depends upon the cause. There are many causes of it. Morphine does not effect a cure. Morphine will give temporary relief, and the poor fellow that hangs half way out of the window all night long gasping for breath every minute and thinks that every minute is his last, he suffers untold torture, and a dose of morphine will put him in Elysium. He is free of everything; that is all gone and everything else. Here is where we get into the trouble the doctor, lawyer, the busy or ignorant. He says it is so easy, I will give him another dose, and they give him hypodermic doses, but it is too much trouble to run there all the time, and they give him a little in the bottle. That doctor who did that is also ignorant or incompetent, if he lets him have any to carry off with him. It is his bounden duty as a [fol. 80] physician and as a fellow man just as soon as he gives this relief to investigate and find out the cause of his cardiac asthma. There are many causes; it may be food, teeth, bad tonsils, constipation. It is his duty to look and search diligently for the cause until he finds it and remove the cause, and the patient gets well sometimes. It is just like the broken leg, about the bones in position. I say, let him remove the cause and the patient will get well by himself, and see to it that he don't get any morphine to pack off with him, because morphine is the worst thing he can possibly take.

W. B. SPEER, a witness for defendant:

Direct examination by General Whitaker:

I live in Chattanooga. I am sixty years of age. I know the defendant, Dr. Boyd and have known him about thirty-five years. I am in the real estate business at present. I feel that I know the general character of Dr. Boyd both as a citizen and physician. It is good. From that general character I would give him full faith and credit on oath.

W. M. NIXON, a witness for the defendant:

Direct examination by General Whitaker:

I have been a resident of Chattanooga fifty years. I have known Dr. Boyd about thirty years. I know more about his character as a doctor. Of course I have done some business with him. He represented an insurance company. I know him as a citizen and his standing in the community and as a business man, doctor, etc. It is good. I certainly would believe him on oath.

Cross-examination by Mr. Taylor:

I don't know so much about his character or reputation as a physician. I know him only as a man. I don't know the character of practice he has had. I never heard of anything except a general practice until late years. I heard the last few years about his being connected with morphine. He was a partner of Dr. Wert and Dr. Francis and Dr. Yarnell in the same office. He has been connected with first class men.

[fol. 81] W. J. POE, a witness for the defendant:

Direct examination by General Whitaker:

I am an old citizen of this community, came here in 1876. I know Dr. Boyd. I think I have known him a little over forty years. I knew him when I first came here. The fact is I had him as my family physician in connection with his father in law, Dr. Wallace, before he ever came to Chattanooga himself. I have known him both as a citizen and physician. I think I know his general character as a citizen and physician. It is good From that general character I would believe him on oath.

Cross-examination by Mr. Taylor:

I know him as a doctor, having had him in my family. He is a good doctor. I think I have had an opportunity to observe that and know him to be a physician of ability and skill.

J. J. TUCKER, a witness for the defendant:

Direct examination by General Whitaker:

I have been a citizen of Chattanooga thirty-eight years. I have known Br. Boyd about thirty-five years. I think I know his general character as a physician and citizen in the community. It is the very best. I certainly would believe him on oath. I am a manufacturer.

Cross-examination by Mr. Taylor:

I know him as a doctor. He is a good doctor, a man of very good education and ability.

J. H. TAYLOR, a witness for the defendant:

Direct examination by General Whitaker:

I am a practicing physician in Chattanooga and have been for about fourteen years. My office is in the Hamilton National Bank

Building. I know Dr. Boyd, the defendant. I think I know his general character, both as a citizen and as a physician. It is good. I would give him full faith and credit on oath. I would not say whether morphinism is a disease or habit. I have not had experience enough. I haven't made a study of that.

[fol. 82] ROY EMERY, a witness for the defendant:

Direct examination by General Whitaker:

I am twenty-eight, man of family, live in Chattanooga, and have been a drug addict. I was a drug addict for a little over five years. I am a fireman, locomotive fireman, and have been about six years. I have been a drug addict better than five years. Dr. Boyd treated me for that disease about the first of April, he started to treat me. He treated me up until the present time. At the time he began to treat me I was taking about ten or twelve grains of dope a day. At the time he began to treat me I wasn't able to work. I weighed about 130 pounds. I now weigh around 168. I was unable at that time to pursue my vocation of locomotive fireman. I am taking now about a grain a day or half a grain. I have been able to resume my duties as fireman and have been for four weeks as a result of Dr. Boyd's treatment. I became an addict when I got my hand shot off. Dr. Wilson treated that hand. I got it shot off in St. Louis.

Cross-examination by Mr. Taylor:

Dr. Boyd began treating me this past April and has been treating me April, May and June. He has now got me down to about a grain a day. I take that grain sometimes in the afternoon and sometimes in the morning. I get it from him at his office. Sometimes I miss a day. I get very sick, I am not getting so sick now. It just makes me sick, and I am nervous, get pretty weak. He just gives me one injection a day. I first went to him in April of this year. When I first went to him, I couldn't tell you how much he cut me down to right off.

SID ELLINGTON, a witness for the defendant:

Direct examination by General Whitaker:

I am forty two year old. I am married. I am a painter and paper hanger. I have chronic pulmonary tuberculosis. I am a dope addict and was for about five years. I have made Chattanooga my home off and on for about fifteen years. The last time I have been here about three years. I live at 2901 Walnut Street. Dr. Boyd treated me for the dope habit. I have been a sufferer from tuber-[fol. 83] culosis since 1918. I was an overseas soldier. I was given compensation in 1922, in the month of February. I was in a Government hospital for treatment. That is the way I contracted the mor-

phine habit, under the administration of the Government's physicians in these hospitals. It was about three months after I came here that I first went to Dr. Boyd. I don't remember the exact date he did begin, but I went to him about eighteen months all told. I went to him eighteen months pretty steadily. When he began to treat me I was past working, and I was just out of the hospital when I first went to see him. I was past pursuing my trade as a paper hanger. At the time Dr. Boyd began to treat me I was using something like eight or ten grains of morphine a day. He gradually reduced it. When I first took the treatment, I told him the amount I was using, and he told me he couldn't give me nothing like that, but would take me as a patient, and he said he would take me off of it. I told him I would do the best I could for I sure wanted to get away from it. I have been able to get away from it. I am cured. I think I have taken one or two tablets in the last three or four months. That was the result of Dr. Boyd's treatment of me.

Cross-examination by Mr. Taylor:

The last I saw Dr. Boyd has been something like two months ago. I couldn't say whether he gave me morphine then or not. He said strychnine to take at the last. He gave me something by hypodermic. I first went to him something like eighteen months ago. I was discharged from the Government hospital, but not as cured. When I was suffering some they would get the morphine through the nurse and some of the boys, getting them into the camp. The nurse would only give it to me by the doctor's advice. That was when I was very sick and suffering. I was an addict when I went into the hospital. In a way, I was given some by the nurses, and couldn't say that they put me on it altogether, because I got some. I was using some before I went into the hospital. I was not getting that from Government doctors. I have tuberculosis now and had it then. My condition has improved and I am not now taking morphine. For eighteen months I was under Dr. Boyd's treatment. I couldn't say as to what he was giving me. I was taking an acid he had and also a tonic. I believe it was anti acid. He gave it to me absolutely there. He asked me if I had any; if I didn't he gave me another box. It is white. It does not look like morphine. I couldn't say that I saw the doctor [fol. 84] have it in his office very much. Somtimes I would be in a place where I couldn't get to him. I went two days that I didn't use it. I don't know that it had any effect unless I could raise the dose to get any effect on it. It was the only relief from suffering. When I first began using it I was taking it hypodermically. I took it that way when I quit. I am willing to have a doctor make an examination of me to determine whether or not I am taking morphine.

Redirect examination by General Whitaker:

In France I had taken a small amount of morphine before I went into a hospital. I was taking it on my own hook. Since I have been relieved of this habit I work pretty regularly with the exception I had chills and fever a few times. When I had that I couldn't work.

JAKE FOSTER, a witness for the defendant:

Direct Examination by General Whitaker:

I live at East Lake, Chattanooga. I have no family. I have lived in Chattanooga about twenty-four years this fall. I am working for the D. M. Stewart Manufacturing Co. I have worked there for twenty-two years. I have worked for different firms. I work all the time. I have used some dope; the doctors gave me some. Rheumatism was the reason I originally began it. I first began to take it three year ago. Dr. Williamson was my doctor. He practices at East Lake. He is the first man that gave me that. I went to Dr. Boyd for treatment. He commenced treating me last July. He treated me on up until the first of January. He relieved me of the habit. I quit it. He gave me a tonic of some kind of medicine. He gave me some morphine during the time I was taking the medicine. He steadily reduced it, until he relieved me of the habit.

Cross-examination by Mr. Taylor:

The first morphine I took was about three years ago. I took it on up until the first of January. I didn't take it regular all the time. I don't know how many doses Dr. Williamson gave me. He gave it to me when I would be suffering. One time I had rheumatism about four months. When I would be suffering bad he would give it to [fol. 85] me. Sometimes he would give it to me every day, and sometimes it would be a week, and then when I would get better it would be longer than that. I didn't take it two or three times a day, only when he gave it to me when I was suffering. I didn't get any morphine only just what Dr. Williamson and Dr. Boyd gave me. I had to have it. I got it from them. I don't know the number of times Dr. Williamson has given it to me. I couldn't say the number of times, because he treated me a long time, several different times. I had rheumatism. Dr. Williamson gave me medicine at different times. He did not give me 606. I don't know what kind of rheumatism I had. Dr. Boyd went to treating me in July of last year. He didn't give me prescriptions; just gave it to me. He never gave me any to take along; gave it to me when I would go for treatment. He would not give it to me every day I would go. He gave it to me on up until he dismissed me. He dismissed me in January of this year. When he dismissed me he said I was well. I taken a half grain the first of January. Dr. Boyd gave it to me. I like to have had fever and grippe and he came out there and gave me inoculation for the fever, and I was getting so when I got up I went over to the office he gave me half a grain of morphine. I don't remember the date. It has been two months and a half ago. I went to him in July, he treated me to January and in January he discharged me. Along at the last I didn't go so often. I don't know whether I went as often in October as I did in July. Sometimes he gave me two injections a day, maybe one or two along at the last. He was giving me some other medicine, a white medicine. He commenced giving me that white stuff this past July.

Redirect examination by General Whitaker:

Dr. Boyd administered this to me in the arm. He never gave a prescription for morphine. All the morphine I ever took from him was that that he administered personally. I had the rheumatism and wasn't able to work when I went to him for treatment. I went back to work in January.

Cross-examination by General Taylor:

All the morphine I took was by hypodermic.

[fol. 86] FRANK ELKINS, a witness for the defendant.

Direct examination by General Whitaker:

I live in Chattanooga, and have off and on for several years. I have been away for a period of a year at a time. I am thirty eight. I have no family. I am a pressman. I was a morphine addict for about two years. I took treatment for that trouble from Dr. Boyd. He is finishing up with me practically now. I think he started on me last December. When he first began treating me I was taking five or six grains of morphine a day. I contracted the habit from a surgical operation, by Dr. McAfee, Dalton, Georgia. I had been an addict a year and a half or two years at the time I went to Dr. Boyd. The operation was for a false rupture caused from heavy lifting. He reduced me. He wanted to reduce right away, and I told him I couldn't do the work I was doing and be reduced. I was still able to work. I got disable- later. I got down — 117 pounds and then I wasn't able to work, and Dr. Boyd commenced to reduce me and give me treatment. I weigh 143 pounds now. I take a quarter of a grain of morphine now, but I don't take it every day; some days I skip a day. I intend to go back to my work next week. I haven't had an opening yet. I am physically able to do so, on account of Dr. Boyd's treatment of me. While he was cutting down the morphine he gave me some powdered stuff he called anti acid and some tonic No. 2 and No. 3.

Cross-examination by Mr. Taylor:

Dr. Boyd began treating me sometime in last December. I was taking five or six grains a day when I went to him. I was getting it the best way I could, around from different parties, doctors, some of them. I got it from Dr. Boyd some. He didn't go to cutting me down on this treatment. He gave me some relief a few times, but he didn't start to treating me until along in December. I don't know how long I had been going to Dr. Boyd before he commenced treating me. I came back here and went to work in May. I went to Dr. Boyd when I came back. From May to December he occasionally gave me relief. He administered it hypodermically. He did not give me any prescriptions. He didn't give me any to carry away with

me. He fixes up the morphine when he injects. Some days I skip. If I eat anything that disagrees with me it stirs my nerves up. He [fol. 87] has been giving me a quarter of a grain for the last two weeks. He gave me either a quarter of a grain or a little strychnine this morning. I don't know what it was. He gave me an injection this morning over at his house. No one else there getting injections while I was there. I was there about eight o'clock. There was no one there but the doctor and his maid. I don't know who she is. They call her Pete. I couldn't swear I saw her, but I think she was there. It stimulates my heart and kind of settles my nerves. When you take a little amount I don't know whether you could tell it was strychnine or morphine. I had a bad night last night; cannot sleep well. I don't say it was strychnine. I suppose that that he gave me quieted my nerves. I seemed to be in better shape than I was. I never took any strychnine. I have had injections of it, from the doctor. He said it was strychnine. I suppose it was. He gave me something the other day; said I will give you a little strychnine. I don't know whether it was strychnine that he gave me this morning or not. I couldn't swear to it. I think it was a quarter of a grain of morphine, but I didn't ask him. I had a bad night.

Dr. Victor Williams, a witness for the defendant:

Direct examination by General Whitaker:

I am a practicing physician and have been for twenty years, all the while in Chattanooga. I think morphinism becomes a disease. I know Dr. Boyd, and have known him for about thirty-five years. I think I know his character both as a physician and as a citizen. It is good. I would believe him on oath in a court. I don't know about the blood itself, whether it is possible to discover under any analysis of it or otherwise whether a man had just recently had a shot and whether it consisted of morphine or strychnine. I couldn't say what test might show it or whether even the blood itself would show it.

Cross-examination by Mr. Taylor:

A dose of morphine to a person unaccustomed to it would contract the pupil of the eye. In addict the pupil stays more or less normal as long as he had his normal supply. If you take it away from him it might suddenly go a little larger. I don't know whether the normal pupil of an addict is smaller than that of a non addict. [fol. 88] I don't remember exactly what effect it has on the skin. It locks up the eliminative organs. I believe it would check the salivary glands. I guess it would check the perspiration, but I am not positive about those. If it did check those, the skin would be harsh and dry in an addict and not moist and soft as in a non addict. I know very little about curing drug addiction. I think I cured one. I took him to the hospital and kept him where I could guard

him carefully and took it away from him about the second or third day under treatment.

Redirect examination by General Whitaker:

I said I really don't know about the pupil of the eye in a normal individual taking a dose of morphine. They have dryness of skin. I couldn't say whether they would continue to have dryness of the skin if they had been a confirmed addict for a month or two after they finally gotten off of morphine to some extent. I don't remember that strychnine would have any special effect on the pupil of the eye.

Recross-examination by Mr. Taylor:

If a man had been restless and nervous the night before and irritable and nervous, either strychnine or bromides would be indicated. You could use strychnine for that condition. It is used for nervous and unstable conditions, and the bromides also. The small doses of strychnine is used for stimulation and the large doses would have the opposite effect. You would get a quicker effect through the hypodermic, but the same general effect given through the mouth or hypodermically. The only difference would be that it might take a little larger quantities to produce that effect if given through the mouth and a little longer time, probably thirty minutes by the mouth and fifteen by the arm. It would be more trouble for the doctor to administer it hypodermically than by the mouth.

G. A. Thompson, a witness for the defendant:

Direct examination by General Whitaker:

I live in Chattanooga and have for twenty-two years. I am a single man and a carpenter. I have been a morphine addict and am now. I have been for five years. I had trouble with my back, suffering, just got to taking it to ease my pain. I got in awful [fol. 89] bad fix, and I went to Dr. Boyd to take treatment for it. I was run down where I couldn't do anything at all. I couldn't follow any work at all, and they told me Dr. Boyd could get me off of it, and I went to him to get treatment to get off the medicine and to get straightened out. I have been in condition so I couldn't follow my trade for one year when I went to Dr. Boyd. I weighed 128 pounds. I weigh now 158 pounds. He treated me four months. I am anxious to get rid of the habit. I was taking from six to eight grains a day, ten grains, as much as I could get hold of when I went to Dr. Boyd, I am now taking two grains a day. He gradually reduced me to two grains a day. He had me to a quarter, but I couldn't stand a quarter grain, so I got back to using two grains a day now. I have been using two grains a little better than a month. While he was reducing the amount of morphine, he gave me a bottle

of liquid stuff and some powder I would take twice a day, and the liquid stuff I would take three times a day after meals. I took that liquid by the teaspoonful. That was given to me to relieve me of my trouble.

Cross-examination by Mr. Taylor:

I first went to Dr. Boyd not quite a year ago. He has not given me any prescriptions. He has not given me any morphine to carry away. I have gone to his office every day. I have missed some. I don't know exactly the date. I have missed very few days. I have been there to-day, about one o'clock. He gave me a dose then. I take sometimes two doses a day. I don't often take three. If I can get one on the outside, but I will if I can get any on the outside from bootleggers, I will take a little more, not often. I am still taking two grains a day. The medicine I get from Dr. Boyd I think has some effect the way it acts on me, as I get the same effect and don't have to have as much medicine as I used to. I am getting the same narcotic effect as when I went to him but taking very much less morphine. I have rupture and back trouble. I don't know what the trouble with my back is. I don't know whether it is gall stones or what it is. I have had that pain for the last five years. Dr. Boyd did not exray me for gall stones. He did not make any examination by introducing probes into my bladder or through the urethra. He never sent me to an exray man to have an exray made. He has never give me anything for the gall stones except [fol. 90] the liquid matter. I take that about three times a day, about two bottles and a half. I don't pay him anything for that. He gives it to me. I am working now. I don't pay him now. I have been going to him four months and not paying him. I have been to him not quite a year. I didn't pay him all. If I had any money I pay him, if I don't have he carries me just the same. For the past four months I haven't paid him anything. That is just for four months. It could have been a few over. It has not been as long as six months. I haven't paid him a nickel. I didn't know he was indicted here in Federal court until the other day.

Earl Yarnell, a witness for the defendant:

Direct examination by General Whitaker:

I am twenty nine. I am a morphine addict, and have been about three years. I contract the habit through sickness. I was disabled in the army. I was an overseas soldier and disabled over there. I have got T. B. and general disability. I was paralyzed. I have spent time in Government hospitals. I took some morphine in Camp Jackson, not very much. I got on it here, after I returned, here in Chattanooga. I just had a weak condition, and I couldn't go, and I took a few doses, and it made me normal and I continued

it. Dr. Boyd has treated me about six months. I am still an addict. At the time I went to Dr. Boyd I was taking about twenty to twenty-five grains, somewhere along there. I weighed about 97 pounds at that time, less than a hundred. I now weigh 145. He has reduced me to four grains. When I went to him I was taking about twenty or twenty-five, all I could get. I am in a very much improved condition from what I was. While he was reducing me he gave me some anti acid and tonic. In that way he brought me to my present condition.

I have taken about two grains to-day. Dr. Boyd gave it to me hypodermically at his office this morning.

Cross-examination by Mr. Taylor:

He gave it to me this morning just before he left. There wasn't anybody there but me. I was taking about twenty grains a day when I went to him. I have a brother who is an addict. He goes to Dr. Boyd also. He has been going to him about the same time [fol. 91] I have. I live here in Chattanooga. I take this tonic at home. I took some tonic this morning. I haven't taken any since noon. I took the anti acid this morning. I do not get the same effect from the morphine now that I did when I first went to him. You suffer when you get out of it, but you don't have to take it much when your condition builds up. What he gives me with it enables me to get along with less.

PLAINTIFF'S EVIDENCE IN REBUTTAL

Dr. L. C. WILLIAMSON recalled:

Direct examination by Mr. Taylor:

I recognize the witness as Jake Foster. I have been doing Mr. Foster's practice and his mother's practically ever since he has been in Chattanooga, and he used to drink at times, not constantly, but he would get drunk, and the next morning I would have to give him a hypodermic. When I saw him he would be delirious, and they would have to take him to Lyons View. I don't think I ever at any time gave him injections of morphine at such frequent intervals as that it could have produced drug addiction. I gave him some just before he was examined for syphilis and taking treatment he was up in my office every day, some days I would give him salts, some days not anything, some days have to give a shot. When I gave him salts treatment he thought I was giving him something to ease him. I have been practicing at East Lake where he lives continuously. There is no reason at all why if he was an addict he wouldn't continue to come to me to get morphine if I was handling it. I have never placed any person on the drug that I know of. I usually buy one hundred tablets at one time. I haven't bought any this year. One hundred quarter grains tablets at a time and they last me for months. A doctor knows an addict by the pin points on their arms where they

have been taking hypodermics. Some of them get right blue. The expression of the face and eyes is not normal. The pupil is usually contracted. The skin is usually dry and hard. An addict who has been without morphine longer than he has been accustomed to going without it, the perspirations breaks loose profusely, it is just a sweat. When they take their quantity it checks that up. The skin gets dry [fol. 92] and hard again. When I was examining I would have no trouble in telling an addict, but it has been years since I have examined a man. I would have a pretty good idea now.

Q. What is the usual method of the administration of strychnine in non emergency cases; in other words, to ask you this hypothetical question: If a patient from his history had been restless on the night before, nervous and irritable, and was about to say become a witness or to go under some condition that would tend to aggravate his nervous condition would strychnine or not be indicated?

A. If he was weak.

It would be a stimulant for him. It would strengthen, help him get control of himself better, and it sharpens his mind. Hypodermically is the quickest relief of administering it, results quicker. In non emergency cases it would be by the mouth. By the mouth it would take effect in thirty minutes. By hypodermic ten to fifteen minutes.

Cross-examination by General Whitaker:

It is a very good idea in treating or trying to cure a morphine addict, after you have gotten him off of the morphine, to stimulate him to some extent with small doses of strychnine now and then. A confirmed addict has dryness of the skin. I should think it would take some little time for that dryness of the skin to entirely disappear. All the excretory glands have been locked up so long it takes sometime to get around to normal. When the Government witness Clyde Cox was attending the clinic at the city hall, sometimes I would come up and have to have my brakes tightened; he is a good mechanic; he would run out and do that; I believe he came out to the house and relined the brakes for me. I didn't see him on the stand. I was out in the hall. I did not give him any morphine except what he got from the clinic. He was a member of the clinic. That was in 1919 and 1920. Fifty four grains of morphine are contained in a dram. Two years ago while Clyde Cox would occasionally work on my automobile and while I was administering dope under the authority of the city I did not give him fore than once to carry away with him as much as two drams of morphine. I did that at no time.

[fol. 93] Dr. E. R. Hochstetter, Jr., a witness for the Government.

Direct examination by Mr. Taylor:

I examined the witness Ellington who testified as a witness for the defendant immediately after he left the stand and went into the hall.

I rolled up the sleeve and made an examination of the tissues in which he had been taking hypodermics. In his arm there were numerous punctures but there were two of recent occurrence. There was some swelling indicating a recent puncture. There is no mistake about that. The right arm, if I am not mistaken, had had a cold abscess on it, and he had been using it on the left arm. I saw the abscess on the right arm. It was of recent origin on account of the coloration and the induration of the tissues, in the last twenty-four hours. I made an observation of his condition, his skin, pupil and composure of the man. The effect of strychnine would probably be three hours. The effect of strychnine is on the centers of the gray matter, which sets up a tonic effect of the muscles of the whole body, including the heart, passing down the -neumogastric nerve, and setting up a tonic effect of all muscular structures of the body. Strychnine slightly dilates the pupil. Morphine tends to make a pin point pupil. The pupils were contracted. That would indicate morphine. The skin was dry today. The injection of strychnine would have no effect outside of contracting the glands through which the sweat pours. I would not say he had taken strychnine. There is a condition with all addicts, it is a peculiar pal-or of the skin striking down all the red corpuscles, a pal-or, that is, that wouldn't be seen in any other condition. You can take two conditions of the addicts, one who has not had a sufficient amount and one who has had a sufficient amount. The expression of the addict, when he had had a sufficient amount, he is perfectly quiet and unassuming. When not, it is a picture of depression, more, and you get the dilated pupil, you get your clammy skin which follows it, it effects the muscles of the mouth, of the leg and other parts of the body. If I would catch that man in that condition, I most surely would say he was an addict of opium. I did not find him with that expression. I didn't look for that. He didn't show a physical expression of any depression to me. He showed the expression of an addict. The customary way of administering in non emergency cases is in the mouth as a tonic mostly. [fol. 94] You get the same effect without the unnecessary labor of a hypodermic when you give by mouth. You have got to give about double the dose, give about a twentieth of a grain, and fortieth by hypodermic.

Cross-examination by General Whitaker:

Where a man is suffering from extreme nervousness or any other extreme discomfort and you want to give quick relief, it would be by injection rather than by mouth in an acute case. I happened to be in the office when Mr. Taylor asked me to examine this man Ellington about the noon hour. I don't know that Mr. Ellington is a tuberculosis subject. In the last stages of tuberculosis you get the dryness of the skin and the mouth. A confirmed morphine addict suffers from dryness of skin, where he is under the influence of the drug. It does not take two or three months for the skin of a morphine addict to be relieved of the dryness and to become normal; it is just the opposite. When you take your morphine patient off the

morphine you have a leaky skin, and it takes quite a length of time before they come back to normal. I concluded that this man Ellington had had an injection of morphine from the dryness of the skin and from the contracted pupil and the condition of the whole body. A recent injection of strychnine would not have the effect of making the skin dry. It would not contract the pupil. It would have the opposite effect. The only condition and knowledge I found in the man is after having a wide experience of about six years. I didn't see the morphine injected in this man. I said his condition was such. I give that as my opinion. I don't know that the Government has had this witness lodged in jail on my testimony.

Mr. Taylor: I will admit that the Government had the witness Ellington lodged in jail.

Dr. L. C. Williamson, recalled by the Government:

Direct examination by Mr. Taylor:

I have made an examination and observed one Ellington, a witness introduced by the defendant in this case. He still has a characteristic of a morphine heart, where it has a sudden kick to it. There is a peculiar behavior of the heart of one addicted to the use of morphine. I found that condition in this man. Morphine contracts the [fol. 95] eye down to a pin point pupil and holds it. I mean by that that it does not respond to the force that regulates the expansion and contraction of the pupil. I made experiments with the pupils of this man's eyes to see whether they normally contract or expand. They stayed at one point, neither contracted nor dilated. Strychnine affects the involuntary muscles. When an involuntary muscle is effected by strychnine the effect is one of relaxation, jerking. The pupilary action of the eye is controlled by muscular force. The effect of strychnine of the pupil would be to expand it. The pupils of this man's eyes are dilated some. It may be possible from the administration of strychnine; it is possible. I don't know whether the effect of strychnine would keep the pupil from responding to the ordinary forces that regulate it. He has the pupil normally found in a morphine addict. His skin has rather a sallow look, but it is moist. That moisture would come to the skin of an addict who has gone without a dose of morphine longer than the customary time. If an addict accustomed to taking as many as three doses of morphine per day had had a dose at eight o'clock in the morning, and had not had a dose ten minutes of three in the afternoon, he would begin to perspire and that would be an indication that he wanted morphine. There are many perforations of the skin on the arms of this man from hypodermic injections. Strychnine in other than emergency cases would ordinarily be administered by the mouth. It acts better by giving by the mouth on the muscles of the stomach as a tonic. In administering the strychnine for the tonic effect, the better way would be by giving by the mouth, for there it acts on the gastric glands, it aids digestion and it is a better tonic. It would effect the -neumo-

gastric nerves which control the stomach and lungs quicker by the arm. For general tonic effect it would be by the mouth.

Cross-examination by General Whitaker:

I said Ellington had the characteristic heart beat and the pupils are not contracted down to where they would be if he had a dose the last hour or so. They are dilated some, but they hold the same pin point and respond to light. If he had had an injection of either strychnine or morphine yesterday or this morning early, I could not tell positively which it was.

Redirect examination by Mr. Taylor:

I could form an opinion from his condition.

[fol. 96] Recross-examination by General Whitaker:

If I couldn't tell anything about it my opinion would be the same as any one's else.

DEFENDANT'S EVIDENCE IN REJOINER

Dr. A. W. BOYD, the defendant:

Direct examination by General Whitaker:

I gave the witness Ellington strychnine early this morning. He has a bad heart. He has trouble in his left lung, either from an old pneumonia or from inactive tuberculosis, and had been very weak since he took that eliminative. I found him in a nervous condition. I have injected strychnine in him at other times. I don't give it to him every day, but just when he seems to need it. The last dose I gave him other than this morning was either yesterday or day before.

Cross-examination by Mr. Taylor:

I did give him an injection this morning, possibly at eight o'clock.

Dr. W. A. MCMANUS, a witness for the defendant:

Direct examination by General Whitaker:

I am a physician. I have been practicing medicine since 1896. I practiced one year at Nashville and about twenty-six in Chattanooga. I was five years in the county work as county physician and president of the board of health, and at the time I was county physician I saw these cases and made important observations, and then I had charge of the state prison at Nashville for twelve months under Dr. E. Y. Williams and we had considerable experience there

with the addicts confined in the state penitentiary. In my judgment the morphine habit grows to be a disease. The use of morphine in the course of time will bring about diseased conditions of all the eliminative organs. In other words, it dries up the secretions of the glandular system, and in turn if there is any weakened condition to the glands there is a suitable receptable for any microorganism that might come from it. The body becomes charged with acid. It interferes with cell metabolism. The jury, to understand [fol. 97] really what I mean by cell metabolism; nature has two processes continually going on within its cells, what is known as a restorative metabolism and a destructive metabolism. The nutriment that you take from the food is imparted to the tissues, and then there is a condition that every time a muscle brings into play there is a tearing down process going on, known as destructive metabolism, and this is eliminated through the kidneys and the lungs, the greatest portion of the matter being furnished through the lungs. That is very easily proven, but anything that will interfere with the elimination or with cell metabolism will naturally start up in the system poisonous acids, and it will cause fermentation, which it dissolves into the circulation and is imparted to the tissues which goes into the system. I have just examined this young man Ellington to determine whether or not he had recently had an injection of morphine or strychnine in his arm. Of course under such an examination it would be almost impossible for any doctor, no matter how scientific he might be, to give a correct diagnosis of his case, but briefly examining him, I examined the pupils of the eye and the heart and lungs. He has some trouble of the lung, especially the left lung. He has either had in time a bad pneumonia or tubercular. He has some little trouble in the right. The pupil of the eye is dilated, which is contrary to the use of morphine. Morphine will cause contraction of the eye. But his eyes were not contracted, they were dilated. The pupils are a little bit dilated, show dilation, and strychnine has a tendency, not in small doses, but in poisonous doses to dilate the pupils where the excessive use of morphine would have a tendency to contract. From my brief examination, he has no symptom to indicate that he has had any morphine today. It looks like strychnine. He has an acceleration of the heart action. I cannot be absolutely definite in my conclusion.

Cross-examination by Mr. Taylor:

The tendency of a twentieth or fortieth of a grain of strychnine to dilate the pupil introduced either by the mouth or arm would depend on the amount taken previously. It is the symptom of over doses of strychnine rather than normal recognized doses that effect the pupilary action, so as to paralyze the muscles. In other words, it wouldn't do that in a normal dose. The pupil would respond. I did not make any experimentation to see whether or not his pupils responded to light by covering one eye. I only just turned him to [fol. 98] the light. I noticed in a brief examination whether it would respond. His heart does not seem to be a narcotic heart. In

a tobacco heart or whiskey heart there is more or less irregularity in the beat. His is not so much irregular as rapid. His skin looks like the skin of an addict. I did not examine the arm. I quit ofter examining the heart and lungs. I didn't look for perforations in the arm. Sometimes they use it there. I have seen people who have to take strychnine. We very often have to give it hypodermically in diseased hearts. Sometimes we give it by the mouth. We usually give it by the mouth. It acts better in emergency cases by hypodermic. I didn't look to see whether his arms were punctured. I was only examining as to his condition, what I was called on for. From the indications I would say he had been addicted to something, some derivative of morphine, the narcotics. He has been addict- to one of those. He shows the land marks that he has been. I don't know whether there is such a thing of taking them off of those things. I couldn't say whether he is an addict now. He is not under the influence of it now. That is all I was called on to examine. I couldn't say whether he is on or off. Like a man drinking, he might be drunk today and sober tomorrow. I couldn't say as to what he is going to do tomorrow.

PLAINTIFF'S EVIDENCE IN SUR-REBUTTAL

SID ELLINGTON called by the Government:

Direct examination by Mr. Taylor:

I testified in this case some time ago. Shortly after Dr. Boyd told me I was cured he told me he would give me some strychnine, and I went in several times and asked him for it, and he would give it to me. I have bought strychnine at the drug store. I would get a vial at a time. I use an eye dropper. He did not put any in my arm this morning. I swear that.

Cross-examination by General Whitaker:

It has been some time back since he gave me an injection. I don't know exactly the date that he did.

The above and foregoing were all the proceedings had on the trial of this case.

[fol. 99] This was all the evidence in this case.

There was a motion made to direct the verdict in favor of the defendant at the close of the evidence of the Government on the ground that there was no evidence to support a verdict for the Government and the evidence preponderated in favor of the defendant's innocence and that the effort of the defendant Dr. A. W. Boyd, was a "good faith proposition" and that he was administering morphine

to his patients in an honest professional undertaking to cure them of the morphine habit which curative process was supplemented by an anti-acid remedy and as all the evidence showed that the defendant was acting within the line of his profession in honestly trying to cure the morphine habit and thinking that he had a curative for it and as all the evidence showed that each and every patient had been greatly benefitted by the treatment of the defendant, some of the patients having been cured, that it was the duty of the court to instruct the jury to return a verdict for the defendant. This motion was overruled by the court as to each and every count in the indictment except the first count. The motion being sustained as to the first count, the jury was given specific instructions to return a verdict for the defendant on this count.

The defendant thereupon proceeded to introduce his evidence. At the conclusion of all the evidence the motion of defendant for peremptory instructions and for a directed verdict was again renewed for the same specific reason, which motion was again overruled by the court except as to the first count in the indictment, for the same reason.

[fol. 100] CHARGE OF THE COURT—June 20, 1924

GENTLEMEN OF THE JURY: In this case the defendant, A. W. Boyd, has been indicted by the grand jury in an indictment, containing thirteen counts. This indictment, in its various counts, charges this defendant with violations of what is popularly known as the Harrison Anti Narcotic Act.

You will give no consideration to the first count of this indictment, except to return a verdict in favor of the defendant. On motion of the defendant, through its counsel, the court directs you to return a verdict in favor of the defendant upon the first count in the indictment. This leaves for your consideration all the remaining counts of this indictment from the second to the thirteenth count, inclusive.

The second count in this indictment charges this defendant with the following offense, that he being a physician, registered dispenser in morphine, and having paid the tax required of such physician and dispenser, bartered, sold, dispensed, exchanged and gave away to one Annie Davis a quantity of narcotic drug, to wit, forty grains of morphine sulphate; that this bartering, selling, exchanging and giving away of the aforesaid morphine sulphate was not in pursuance of a written order of the said Annie Davis on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States, but that the defendant Boyd issued a certain prescription, to-wit:

Aug. 13, 1923.

For: Annie Davis, 4041 Cherry St. Age 38 years, addict for 21 years, incurable senility, Morphine Sulphate 40 grs. Sig: As directed.

(Signed) A. W. Boyd."

That this morphine sulphate was distributed by the defendant Boyd not in the course of his professional practice only, but it was intended by Boyd that this prescription be filled by a retail dealer in morphine, and that this prescription was filled by the Hennessee Bros. Pharmacy, and that the narcotics called for in the prescription were placed in the possession of Annie Davis as intended by the defendant Boyd, contrary to the statute and against the peace and dignity of the United States.

The Third count in this indictment, gentlemen, makes the same [fol. 101] allegations against this defendant with reference to a prescription dated August 2, 1923, for forty-eight grains of morphine sulphate.

The fourth count in this indictment makes the same allegations against the defendant Boyd with reference to a prescription dated August 9, 1923, for forty-eight grains of morphine sulphate.

The fifth count makes the same allegation against the defendant Boyd with reference to a prescription dated August 7, 1923, for Russell Goodman for twenty-four grains of morphine sulphate, and it is further alleged that this prescription was filled by the Reed House Pharmacy.

The sixth count in this indictment makes the same allegations against the defendant Boyd with reference to a prescription dated August 11, 1923, for Russell Goodman for twenty-four grains of morphine sulphate, which it is alleged was filled by the Reed House Pharmacy.

The seventh count makes the same allegations against the defendant with reference to a prescription dated August 15, 1923, for Russel Goodman for twenty-four grains of morphine sulphate which it is alleged was filled at the Reed House Pharmacy.

The eighth count makes the same allegations against this defendant with reference to a prescription dated August 23, 1923, for George O'Neil for twenty-four grains of morphine sulphate, which it is alleged was filled by the Reed House Pharmacy.

The ninth count makes the same allegations against this defendant Boyd with reference to a prescription dated August 26, 1923, for George O'Neil for twenty-four grains of morphine sulphate which it is alleged was filled at the Reed House Pharmacy.

The tenth count makes the same allegations against this defendant Boyd with reference to a prescription dated August 29, 1923, for George O'Neil for twenty-four grains of morphine sulphate, which it is alleged was filled at the Reed House Pharmacy.

The eleventh count makes the same allegations against this defendant Boyd with reference to a prescription dated August 18, 1923, for Frank O'Hara for thirty grains of morphine sulphate, which it is alleged was filled at the Reed House Pharmacy.

The twelfth count makes the same allegations against this defendant Boyd with reference to a prescription dated August 24, 1923, for Frank O'Hara for thirty grains of morphine sulphate, which it is alleged was filled by the Reed House Pharmacy.

[fol. 102] The Thirteenth count in the indictment names the same allegations with reference to a prescription dated August 20, 1923,

for Frank O'Hara for thirty grains of morphine sulphate, which it is alleged was filled at the Reed House Pharmacy.

To this indictment and the various counts thereof, this defendant comes and pleads not guilty, and thus is formed the issues in this case, gentlemen, under each of these counts of this indictment, which you are trying, and upon which issues you are to render a true verdict in this case.

Now, gentlemen, so much of this Harrison Anti Narcotic Act as is material for your consideration reads as follows:

Sec. 2. That it shall be unlawful for any person to sell, barter, exchange or give away any of the aforesaid drugs, which includes this morphine sulphate, except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged or given on a form issued in blank for that purpose by the Commissioner of Internal Revenue. It is provided in this section 2 that nothing contained in this section shall apply, sub-sec. (a) to the dispensing or distribution of any of the aforesaid drugs to a patient by a physician registered under this act in the course of his professional practice only.

Now in this case, gentlemen of the jury, there are certain features of it about which you will have no trouble. It is alleged in this indictment and in the various counts for your consideration that this defendant was a physician, and it is admitted that he was, so there is nothing for you to decide upon that score. It is further alleged in the indictment that he was duly registered with the Collector of Internal Revenue, and it is admitted that he was. It is further alleged in this indictment that he had paid the special tax required of dealers or dispensers in opium and these other narcotics, and it is admitted that he had. Now it is further admitted in this case and stands undisputed that this defendant did not dispense morphine upon order blanks signed by the parties to whom the morphine was delivered. There is no controversy about that proposition. In other words, the defendant insists that he was not required to take order blanks signed by the parties to whom the morphine was delivered, because the defendant insists that he fell within the exception of sec. 2, which has been read in your presence, which exception provides that nothing contained in this section, that is, sec. 2, shall apply to the dispensing or distribution of any of the aforesaid drugs to a [fol. 103] patient by a physician in the course of his professional practice only. The insistence of the defendant in this case is that while it is true that he wrote prescriptions as alleged in this indictment, and about that you have no trouble, because it is undisputed and admitted here that this defendant did write these prescriptions, and there is no*t* dispute about the further question that the morphine was caused to be delivered to these various parties by reason of those prescriptions, but the defendant insists that he violated no law, because he insists that he is protected by this provision of law, which is to the effect that nothing contained in this section shall apply to the dispensing or distribution of any of the aforesaid drugs to a patient by a physician in the course of his professional practice

only. Now the Government insists that he did not write these prescriptions in the course of his professional practice only, and you gentlemen can thus see the real point in controversy in issue here, that is, as to whether this defendant Boyd wrote these prescriptions to these various parties as a physician to his patient in the course of his professional practice only. That is the gravamen or gist of this controversy here between the United States, on the one hand, and Dr. Boyd upon the other. And the question, gentlemen, the determinative question here turns pretty largely upon the question of the good faith of this defendant in issuing these prescriptions. Now I instruct you that as is contemplated by this Act and as set out by this Act, the defendant would have the right to dispense morphine and to issue prescriptions to his patient for his patient to the drug stores for morphine where he does that in good faith in the course of his professional practice and only in a case of that kind. I instruct you that if you find that in any of these cases submitted for your consideration, in all these counts in this indictment submitted for your consideration, that this defendant Boyd did issue these prescriptions to these parties or to any of them for morphine, and that he did that in good faith for the purpose of affecting a cure or some malady or disease with which his patient was suffering, and that these patients or any of them received the morphine upon these prescriptions under such circumstances as that, then I instruct you that the defendant would not be guilty, and it would be your duty to acquit him, or if that question is left reasonably doubtful in your mind as to whether in the course of his professional practice only he issued these prescriptions for his patients to the drug stores, and thereby caused these patients to get possession of morphine, if that question [fol. 104] is left reasonably doubtful as to whether he did it in good faith for the purpose of curing disease or relieving suffering or otherwise, than the defendant would be entitled to the benefit of the doubt, and entitled to an acquittal. And that would be so, gentlemen of the jury, regardless whether he was undertaking to cure some disease other than morphinism, or whether he was in good faith as a physician practicing his profession undertaking to cure morphinism, and I instruct you that in considering the question as to whether or not he was acting in good faith as a physician administering to his patient, you take into consideration all the facts and circumstances surrounding the whole transaction. What are the different recognized methods known to the profession for the curing of morphinism, and for the relief of suffering from morphinism; what methods, what course, what means does the profession use for that purpose; are they recognized methods, the sudden taking away of morphine, or is one of the recognized methods for curing morphinism the distribution of morphine, or is one of the recognized methods, as is insisted upon by the defendant, the reduction process, that is, the taking away of morphine gradually from the patient? You also take into consideration the amount of morphine that Dr. Boyd was using. Was he using the normal amount used by physicians in full practice, or was he using an excessive amount of morphine in the prac-

tice, and if he was using excessive amounts, was there any reason or occasion for his using excessive amounts in the course of his professional practice only as a physician? What was the nature of his practice; what was the extent of it; what was the character of the patients for whom he prescribed, and what was the necessity, if any, for morphine in their cases, and the amount of morphine? You take the whole field of the evidence, gentlemen, on both sides to help you determine the question of the good faith of this defendant in issuing these prescriptions.

Now I instruct you, gentlemen, that issuing prescriptions simply from a humanitarian standpoint, that is, putting into the hands of addicts narcotics simply as a humane act, is not justified by the law, and I instruct you that putting into the hands of addicts excessive amounts of narcotics by way of furnishing prescriptions simply because the druggists would not fill prescriptions for smaller amounts would not justify this defendant in writing the prescriptions for large amounts, but as I say, you take into consideration the whole field of the testimony to help you determine the question of the good faith of this defendant.

[fol. 105] Now, gentlemen, I instruct you if you believe, on the other hand, beyond a reasonable doubt that this defendant did not write these prescriptions to the druggists for his patients named in these different counts in this indictment in good faith in the course of his professional practice only, but if you believe beyond a reasonable doubt that he simply used these prescriptions as a means and a method whereby narcotics could be put into the hands of these different parties mentioned in this indictment, or any of them, simply to satisfy their craving for the drug, and to satisfy their appetite for it, simply to keep them comfortable as addicts in the use of it, if you find any such state of facts as that, gentlemen, beyond a reasonable doubt, then I instruct you that the defendant would be guilty upon each and every count in this indictment with reference to which you find such a state of facts. I instruct you that in that case that if you believe beyond a reasonable doubt that this defendant, not as a physician in the course of his professional practice only, but simply as a commercial proposition to make money for himself or simply to satisfy the cravings of an addict for drugs, wrote these prescriptions, and thereby caused the druggists to fill the prescriptions and deliver this morphine to the addicts, then I instruct you, gentlemen, that these prescriptions which we had been calling prescriptions, would not be considered as prescriptions at all; they would be nothing more than simply order blanks to the druggists for morphine, and could not be dignified by the term of doctor's or Physician's prescriptions at all. And in determining the question, gentlemen, as to whether or not the defendant Boyd used this method of written orders signed by him as a physician to the druggists as a method whereby these different parties could get morphine to satisfy their cravings and to keep them comfortable in the use of the drug as addicts, you look to all the facts and circumstances in the case. Were they addicts; were they in such situation physically as that they craved this drug to keep them comfortable

in the use of it; were there few or many of them attendant upon Dr. Boyd; was it a commercial proposition with him or a good faith proposition with him, or if it was not a commercial proposition with him, was it a humanitarian proposition with him; did he do it to satisfy their craving for drugs rather than to cure them from disease; take all things into consideration.

I further instruct you in this case that if you believe beyond a reasonable doubt that these different parties, Annie Davis, O'Hara, [fol. 106] O'Neil, Goodman, applied to this defendant Boyd for drugs or for prescriptions for drugs, and if you believe that beyond a reasonable doubt that this defendant Boyd knew that they were addicts, and that although he was undertaking to cure them of the drug addiction, if you believe beyond a reasonable doubt that as to these patients or so-called patients or as to any of them, that he wrote for them these prescriptions or for any of them the prescriptions set out in the indictment, and that he wrote those prescriptions for excessive amounts of morphine, that is to say, excessive in this, that he wrote the prescriptions for amounts of morphine for a great number of doses of morphine, more than was sufficient for the necessity of any one particular administration of it, and that by virtue of his writing these prescriptions for these large amounts or excessive amounts of morphine, more than sufficient for any one particular administration of it, that this caused these prescriptions to be filled by the druggists and these excessive amounts of morphine to thus be put into the hands of an addict to be self-administered by them over a succeeding period of days, considerable number of days, with nothing to guide or direct the self-administration of that morphine except the weakened will of the addicts themselves, if you find such a state of facts as that, gentlemen, then the law declares that the defendant has violated the law, and as I say, it would be no defense to him, gentlemen, that the druggists would not fill the prescriptions for smaller amounts, because he would not be compelled to violate the law. He might dispense the morphine himself without the use of a prescription, but how the facts in this case are it is for you to determine as to the amounts of the prescriptions, whether written for more than was necessary for any particular administration, or whether more than was necessary was put into the unrestricted control of an addict with nothing to prevent them from taking it as directed except their own weakened will; how all these facts are it is for you to determine, gentlemen of the jury.

Now, gentlemen, there has been evidence here touching this defendant's good character, and I instruct you that where the good character of the defendant appears in the proof, then that evidence of good character, gentlemen, strengthens the presumption of innocence which the law indulges in his behalf, but I instruct you that if notwithstanding evidence touching his good character, you find the defendant guilty, and are satisfied of his guilt beyond a [fol. 107] reasonable doubt, then his good character does not excuse him.

Now, gentlemen, the law presumes this defendant innocent, and

that presumption stands as a witness for him until it is overturned by competent and credible proof, and that beyond a reasonable doubt.

It is further incumbent upon the Government to establish his guilt beyond a reasonable doubt before you can convict the defendant. By reasonable doubt is meant not that by which a possibility may arise, but it is that doubt engendered by the whole proof, an inability after such investigation to let the mind rest easily. Absolute certainty of guilt is not required to convict, but moral certainty is required as to every proposition of proof requisite to constitute the offense. You gentlemen are the sole judges of the evidence and the weight to be given to the swearing of each and every witness in the case, but the law you will take as given you by the court. If the evidence is conflicting, you must reconcile it, if it can be done, and if not wholly, at least as far as you can, without hastily or rashly concluding that any witness has sworn falsely, for the law presumes every witness has sworn the truth. In reconciling the evidence and in ascertaining its weight, you should look to the interests and feeling of the witnesses, if any is manifested, to their relationship to any of the parties, if such is a fact, to their intelligence and respectability, to their manner of testifying, to their means of knowledge of the facts about which they testify, to their willingness and readiness to answer on the one side, or their reluctance and tardiness on the other side, if such be shown, and to their motives to speak the truth.

You will give greater weight to those witnesses believed by you to have correctly and truthfully detailed the facts in the case.

Now this defendant has been a witness for himself. He had a right to be, and you should weigh his testimony just like you do that of any other witness in the case, but you keep in mind, however, that he is an interested witness, and interested in the result of the trial, and you take that into consideration in determining the weight you give to his testimony. There are different modes of impeaching a witness. One is by proving by credible witnesses that they know the general character of the assailed witness, and would that general character would not believe him on oath; another mode is to prove that the witness has at different times made conflicting statements as to material facts in the case as to which he testified. Still another mode is by rigid and close examination to involve the [fol. 108] witness in discrepancies. The fact that the character of a witness for veracity is assailed by a single credible witness casts a reproach upon it, and such witness is said to be impeached. But you will consider, however, that even an impeached witness, one of bad character, may, of course, swear the truth, and in determining how this is, look to all the proof in the case to see whether his character has been sustained, and to the reasonableness of the story, and then determine what weight, if any, you will give to his swearing.

Now, gentlemen, if you find for the defendant, it will be a verdict of not guilty. If you have a reasonable doubt as to his guilt, your verdict will be not guilty, or if you have a reasonable doubt as to his guilt upon any of these different counts in this indictment which has been submitted for your consideration, you find the de-

fendant not guilty as to that count or those particular counts. You will not find the defendant guilty upon any count as to which you entertain a reasonable doubt as to his guilt, but if you find him guilty upon all the counts in this indictment and are satisfied beyond a reasonable doubt, your verdict will be simply on all the counts. If you find the defendant guilty at all, you will report in your verdict and say upon what count or counts you find the defendant guilty. You keep in mind that the first count is not submitted for your consideration, except as I say, in that count the verdict will be in favor of the defendant. For your convenience, gentlemen, I send this indictment out with you. I say this to you, gentlemen, that before you can find the defendant guilty the proof must show beyond a reasonable doubt that the offense was committed in the Southern Division of the Eastern District of Tennessee, that is, in Hamilton County, and within three years before the finding of this indictment, found November 14, 1923.

I am requested to say to you, gentlemen, that in determining whether or not the defendant prescribing morphine to his patients was honestly seeking to cure them of the morphine habit, while applying his curative remedies, it is not necessary for the jury to believe that defendant's treatment would cure the morphine habit, but it is sufficient if defendant honestly believed his remedy was a cure for this disease.

I instruct you that if that is true, regardless of whether the course of treatment given by this defendant is a cure, the question is, was he honestly and in good faith in the course of his professional practice and in an effort to cure disease issuing these prescriptions.

[fol. 109] The jury returned a verdict of guilty as charged under Counts 2, 3, 4, 11, 12 and 13 of the indictment.

Whereupon, George C. Taylor, United States District Attorney, entered a nolle as to all the other counts in the indictment, namely: Counts 5, 6, 7, 8, 9 and 10.

The defendant thereupon entered a motion for a new trial as follows:

MOTION FOR A NEW TRIAL

The defendant moves the Court to set aside the verdict of the jury and grant him a new trial in this case on the following grounds, to wit:

(1) Because the verdict of the jury is not sustained by the evidence.

(2) Because the evidence preponderates against the verdict of the jury.

(3) Because of reasonable doubt as to the guilt of defendant arising out of proof in the case, and such doubt as reason sanctions and entertains as a reasonable doubt.

(4) Because the Court erred in charging the jury as follows:

"I further instruct you in this case that if you believe beyond a reasonable doubt that these different parties, Annie Davis, O'Hara, O'Neil, Goodman, applied to this defendant Boyd for drugs or for prescriptions for drugs, and if you believe that beyond a reasonable doubt that this defendant Boyd knew that they were addicts, and that although he was undertaking to cure them of the drug addiction, if you believe beyond a reasonable doubt that as to these patients or so-called patients or as to any of them, that he wrote for them these prescriptions or for any one of them the prescriptions set out in the indictment, and that he wrote those prescriptions for excessive [fol. 110] amounts of morphine, that is to say, excessive in this, that he wrote the prescriptions for amounts of morphine for a great number of doses of morphine, more than was sufficient for the necessity of any one particular administration of it, and that by virtue of his writing these prescriptions for these large amounts or excessive amounts or morphine, more than sufficient for any one particular administration of it, that this caused these prescriptions to be filled by the druggists and these excessive amounts of morphine to thus be put into the hands of an addict to be self-administered by them over a succeeding period of days, considerable number of days, with nothing to guide or direct the self-administration of that morphine except the weakened will of the addict themselves, if you find such a state of acts as that, gentlemen, then the law declares the defendant has violated the law, and as I say, it would be no defense to him, gentlemen, that the druggist would not fill the prescriptions for smaller amounts, because he would not be compelled to violate the law."

Which charge was contrary to the law and highly prejudicial to the rights of the defendant.

Whitaker & Foust, Attorneys for Movant.

Minute Entries

The Court overruled defendant's motion for a new trial stating its reasons in an oral opinion, to which exceptions were taken.

Defendant was notified to appear in open Court on the 5th day of July, 1924. The Court thereupon pronounced judgment and sentence upon the defendant as will appear by minute entry on the record, to which action of the court the defendant then and there excepted.

On application of the defendant at that time and in open court he was by the court allowed thirty days in which to prepare and tender and file his bill of exceptions, and in which to present his petition for writ of errors and make application for supersedeas and bail pending the determination of his writ of errors, which time as

will appear from the minute entry in the transpetition for writ of error and making application for supersedeas and bail pending the determination of his writ of error was extended by the court from time to time as will appear from the minute entry in the transcript of the record.

The above was all of the testimony introduced, evidence heard and proceedings had.

[fol. 111] IN UNITED STATES DISTRICT COURT

ORDER SETTLING BILL OF EXCEPTIONS

The defendant tenders this, his bill of exceptions to the action of the court, and prays that this, his bill of exceptions may be allowed, settled, signed, sealed and made a part of the record in this case.

This the 19 day of Sept. 1924, this bill of exceptions settled and signed by the court.

Xen Hicks, District Judge.

O. K. Geo. C. Taylor, U. S. Attorney.

IN UNITED STATES DISTRICT COURT

PETITION FOR WRIT OF ERROR—Filed July 5, 1924

To the Honorable Xen Hicks, Judge of the District Court for the Southern Division of the Eastern District of Tennessee:

Now comes Dr. A. W. Boyd and respectfully shows:

That at the May term 1924 of this Honorable Court, a jury duly impanelled, found a verdict of guilty upon the second (2), Third (3), Fourth (4), Eleventh (11), Twelfth (12), and Thirteenth, (13) counts of the indictment against your petitioner and in favor of the prosecution, United States of America; that upon said verdict a final judgment was entered on the 5th day of July, 1924, against your petition, Dr. A. W. Boyd, by which he was sentenced to pay a fine of $200.00 each on the several counts upon which he was convicted, and to imprisonment in the penitentiary for two years upon each count upon which he was convicted, said sentences of imprisonment to run concurrent, and in which all costs of the cause were adjudged your petitioner; in which said judgment and proceedings had prior thereto in the cause certain errors were committed to the prejudice of defendant, your pjetitioner, all of which will appear in [fol. 112] detail from the assignment of errors which is filed with this petition.

Wherefore, premises considered, your petitioner prays:

That a writ of error duly issue in his behalf from the Circuit Court of Appeals for the Sixth Circuit, for the correction of the errors com-

plained of and herewith assigned, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the said Circuit Court of Appeals.

Petitioner prays that the service of citation on this writ of error, petitioner be allowed bail and to go at large until the determination of said writ of error by said Circuit Court of Appeals; and that an order be made fixing the amount of bail to be given by defendant, conditioned as the law may direct, and that upon giving such bail or bond, as may be required, that he may go at large pending the determination of said writ of error by said Circuit Court of Appeals.

Whitaker & Foust, Attorneys for Defendant.

Order

A writ of error is allowed as above prayed, to operate as a supersedeas and stay of execution.

This 5th day of July, 1924.

Xen Hicks, U. S. District Judge.

[fol. 113] IN UNITED STATES DISTRICT COURT

WRIT OF ERROR—July 5, 1924

UNITED STATES OF AMERICA, ss:

The President of the United States, Calvin Coolidge, to the Honorable Judges of the District Court of the United States for the Southern Division, Eastern District of Tennessee, Greetings:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between Dr. A. W. Boyd, plaintiff in error, and the United States of America, Defendant in Error, a manifest error has happened to the damage of Dr. A. W. Boyd, plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been should be corrected and that full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Sixth Circuit, together with this writ so that you have the same at Cincinnati, in the State of Ohio, where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the 5th day of July, 1924.

Lee A. Beeler, Clerk, by Geo. E. Graham, Deputy Clerk.

Allowed this the 5th day of July, 1924. Xen Hicks, U. S. D. Judge.

[fol. 114] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed July 5, 1924

Now comes Dr. A. W. Boyd, defendant in the above numbered and entitled cause, and in connection with his petition for a writ of errors in the cause, assigns the following errors, which defendant avers occurred in the trial thereof and upon which he relies to reverse the judgment herein as appears of record:

(1) Because the verdict of the jury is not sustained by the evidence.

(2) Because the evidence preponderates against the verdict of the jury.

(3) Because of reasonable doubt as to the guilt of defendant arising out of the proof in the case, and such doubt as reason sanctions and entertains as a reasonable doubt.

(4) Because the Court erred in charging the jury as follows:

"I further instruct you in this case that if you believe beyond a reasonable doubt that these different parties, Annie Davis, O'Hara, O'Neil, Goodman, applied to this defendant Boyd for drugs or for prescriptions for drugs, and if you believe that beyond a reasonable doubt that this defendant Boyd knew that they were addicts, and that although he was undertaking to cure them of the drug addiction, if you believe beyond a reasonable doubt that as to these patients or so-called patients or as to any of them, that he wrote for them these prescriptions or for any one of them the prescriptions set out in the indictment, and that he write those prescriptions for excessive amounts of morphine, that is to say, excessive in this, that he wrote the prescriptions for amounts of morphine for a great number of doses of morphine, more than was sufficient for the necessity of any one particular administration of it, and that by virtue of his writing these prescriptions for these large amounts or excessive amounts of morphine, more than sufficient for any one particular administration of it, that this cause these prescriptions to be filled by the druggists and these excessive amounts of morphine to thus be put into the hands of an addict to be self-administered by them over a succeeding period of days, considerable number of days, with nothing to guide or direct the self-administration of that morphine except the weakened will of the addict themselves, if you find such a state of facts as that, gentlemen, then the law declares the defendant violated the law, and as I say, it would be no defense to him, [fol. 115] gentlemen, that the druggists would not fill the prescriptions for smaller amounts, because he would not be compelled to violate the law."

Which charge was contrary to the law and highly prejudicial to the rights of the defendant.

IN UNITED STATES DISTRICT COURT

PRAYER FOR REVERSAL

Now wherefore the said Dr. A. W. Boyd prays that the judgment of said District Court be reversed.

Whitaker & Foust, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

ORDER AS TO BAIL—Filed July 5, 1924

The Plaintiff in Error will be admitted to bail pending the writ of error, on giving bond conditioned according to law, in the penal sum of Twenty Five Hundred Dollars ($2,500.00), with sureties approved by the Clerk of the Court.

This 5th day of July, 1924.

Xen Hicks, U. S. D. Judge.

[fol. 116] CITATION—In usual form showing service on Geo. C. Taylor; filed July 5, 1924; omitted in printing

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[fol. 117] BOND ON APPEAL FOR $2,500—Approved and filed July 5, 1924; omitted in printing

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[fol. 118] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING FORTY DAYS' ADDITIONAL TIME ON APPEAL—Filed July 15, 1924

In this cause, forty days additional time is allowed the clerk within which to prepare the transcript of the record and file the same with the Clerk of the United States Circuit Court of Appeals.

Approved for entry.

Xen Hicks, Judge.

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING FURTHER TIME ON APPEAL—Filed Aug. 20, 1924

In this cause, the defendant is allowed twenty days additional time within which to prepare and file the transcript of record and bill of exceptions with the clerk.

Approved for entry.

Xen Hicks, Judge.

[fol. 119] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME ON APPEAL—Filed Aug. 20, 1924

In this cause the clerk is allowed thirty days additional time within which to prepare and file the transcript of the record with the clerk of the United States Circuit Court of Appeals, at Cincinnati, Ohio.

Approved for entry.

Xen Hicks, Judge.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Sept. 20, 1924

The Clerk will copy and make a part of the transcript the following parts of the record in his case:

1. The indictment.
2. The trial order.
3. The actions of the Court on the motions of the defendant; for a directed verdict.
4. The verdict of the Jury.
5. The order pronouncing judgment upon the verdict of the jury and the sentence of the Court.
6. The judgment of the Court.
7. The order overruling Defendant's motion for a new trial and admitting him to bail pending the hearing of his motion.
8. The bill of exceptions.
9. The petition for writ of error.
10. The writ of error.
11. The assignment of error.
12. Orders allowing writ of error and admitting Defendant to bail and directing that the order allowing the petition for writ of error shall operate as a supersedeas.
13. Citation and acknowledgment of service.
14. Extension of Time for making and preparing bill of exceptions, etc.
15. Bail Bond.
16. All other minute entries.

Whitaker & Foust, Attorneys for Defense.

[fol. 120] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Eastern District of Tennessee, Southern Division, ss:

I, Lee A. Beeler, Clerk of the District Court of the United States within and for the District aforesaid, do hereby certify that the foregoing is a true, correct and complete transcript of the proceedings had by and before said Court in the case of the United States of America, vs. A. W. Boyd, No. 4862, in said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the said Court at Chattanooga, within said District and the Sixth Circuit, this the 23rd day of September, A. D. 1924.

Lee A. Beeler, Clerk, by Geo. E. Gresham, Deputy Clerk.
(Seal.)

[fol. 121] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPEARANCE OF COUNSEL—Filed Sept. 26, 1924

Arthur B. Mussman, Clerk of said Court:

Please enter my appearance as counsel for the plaintiff in error.

M. N. Whitaker.

IN UNITED STATES CIRCUIT COURT OF APPEALS

Before Denison and Moorman, C. JJ., and Westenhaver, D. J.

ARGUMENT & SUBMISSION—March 10, 1925

This cause is argued by Mr. M. N. Whitaker for the plaintiff in error and by Mr. George C. Taylor, United States Attorney, for the defendant in error and is submitted to the Court.

[fol. 122] IN UNITED STATES CIRCUIT COURT OF APPEALS

Error to the District Court of the United States for the Eastern District of Tennessee

JUDGMENT—Filed April 6, 1925

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Tennessee, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be and the same is hereby affirmed. Mandate to issue forthwith.

[fol. 123] In United States Circuit Court of Appeals

Dr. A. W. Boyd, Plaintiff in Error,

vs.

United States of America, Defendant in Error

Error to the District Court of the United States for the Eastern District of Tennessee

Before Denison and Moorman, Circuit Judges, and Westenhaver, District Judge.

Opinion—Filed April 6, 1925

Per Curiam:

This writ of error is prosecuted to reverse conviction and sentence for a violation of Harrison Narcotic Act. Plaintiff in error is a registered physician. The trial below was conducted on the theory that his dispensation of morphine sulphate was in good-faith efforts to cure addicts. He was found guilty and sentenced upon five counts involving five separate sales, the total sentence, however, being less than might have been imposed upon any one count. No error was properly preserved and assigned for review except failure to direct a verdict of not guilty at the conclusion of all the testimony. The verdict is amply supported by testimony, even upon the theory of the defense, so that it is unnecessary, in order to support the judgment, to resort to the authority of United States v. Behrman, 258 U. S. 280; Hobart v. United States (6 C. C. A.), 299 Fed. 784; Simons v. United States (6 C. C. A.), 300 Fed. 321. If that part of the charge now criticised had been excepted to and were now properly before us for review, it would be found in accordance with the doctrine of these cases. See also Webb v. United States, 249 U. S. 96; Jin Fuey Moy v. United States, 254 U. S. 189. These are the only criticisms made of the proceedings in the trial court.

The judgment is affirmed, and the mandate will issue forthwith.

[fol. 124] In United States Circuit Court of Appeals

Motion to Stay Mandate—Filed April 11, 1925

Comes the defendant, Dr. W. A. Boyd, by and through his counsel, and moves the court to stay the execution of the judgment of affirmance in the foregoing case for the period of sixty days

pending application to the Supreme Court of the United States, for writ of error to the Supreme Court of the United States, seeking to review and reverse the judgment of the Court of Appeals heretofore rendered in this case.

Whitaker & Foust, Attorneys for Dr. A. W. Boyd.

I acknowledge service of notice of the motion and copy of the motion.

Geo. C. Taylor, U. S. Atty. E. Dist of Tenn.

[fol. 125] In United States Circuit Court of Appeals

Clerk's Certificate

I, Arthur B. Mussman, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of Dr. A. W. Boyd vs. The United States of America, No. 4245, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 14th day of April, A. D. 1925.

Arthur B. Mussman, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit. (Seal of the United States Circuit Court of Appeals, Sixth Circuit.)

[fol. 126] Supreme Court of the United States

Order Allowing Certiorari—Filed May 11, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

It is further ordered that this case be, and the same is hereby, placed on the summary docket, and advanced for argument on Monday, November 2d next, after the cases heretofore assigned for that day.

May 11, 1925.

Office Supreme Court, U. S.
FILED
APR 16 1925
WM. R. S[illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1925

No. 10[illegible] 365

DR. A. W. BOYD, PETITIONER,

vs.

UNITED STATES OF AMERICA.

PETITION OF DR. A. W. BOYD FOR WRIT OF CERTIORARI AND SUPERSEDEAS TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

WHITAKER & FOUST,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 1075.

DR. A. W. BOYD, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION OF DR. A. W. BOYD FOR WRIT OF CERTIORARI AND SUPERSEDEAS TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable the Justices of the Supreme Court of the United States:

Your petitioner respectfully submits that he is very much aggrieved by a judgment of the Court of Appeals for the Sixth Judicial Circuit affirming a sentence of conviction of the District Court of the United States and the Eastern District of Tennessee for the alleged violation of the Harrison Narcotic Act pronounced against him on April 6, 1925, sentencing petitioner to two years' confinement in the Federal

prison and imposing against petitioner a fine of $1,000, and respectfully prays for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Third Circuit, and shows:

Petitioner, Dr. A. W. Boyd, defended said prosecution on the "good-faith proposition"; that he is a physician of long standing and a duly registered physician under the Harrison Narcotic Act; that in treating narcotic addicts he had a remedy that he believed would effect a cure which was an anti-acid remedy known as Numbers 1, 2, and 3, contained in small-sized bottles that he gave the patient as a cure while gradually reducing the amount of morphine he thought the patient required.

Court of Appeals Tr., 82, 83, 84, 86, 89, 90.

The Government prosecuted on the theory that petitioner, Dr. A. W. Boyd, was guilty notwithstanding his good faith in attempting to cure addicts if he prescribed to the addicts set out in the indictment, Annie Davis, O'Hara, O'Neal, and Goodman, more morphine at any one time than was sufficient for one dose. Petitioner admitted he did this, prescribing at one time a sufficient quantity to last the patient, taken in separate doses, for a period of four or five days. There was no dispute about this. The trial judge charged the jury that if petitioner "wrote prescriptions for amounts of morphine for a great number of doses of morphine more than was sufficient for the necessity of one particular administration of it and that by virtue of his writing these prescriptions for these large amounts or excessive amounts of morphine, more than sufficient for any one administration of it, * * * then the law declares the defendant has violated the law." This charge was excepted to *after* the jury returned the

verdict of guilty and assigned as a cause for a new trial in this case.

Court of Appeals Tr., 109, 110.

The Court of Appeals held that notwithstanding this charge was not excepted to at the time given it was a correct charge under the authority of United States *v.* Behrman, 258 U. S. 280; Hobart *v.* United States (6 C. C. A.), 299 Fed. 784; Simmons *v.* United States (6 C. C. A.), 300 Fed. Rep. 321; Webb *v.* United States, 249 U. S. 96; Jin Fuey Moy *v.* United States, 254 U. S. 189.

See opinion of Court of Appeals, April 6, 1925, which is hereto attached and made a part of this petition.

Transcript of the record in the Court of Appeals and of the judgment and opinion of said Court are herewith filed as Exhibits "A," "B," and "C" to this petition and made a part of the same. Motion was made to stay the judgment of the Court of Appeals pending the application for this writ of certiorari, which motion was granted and expires on the 6th day of May, 1925. Said motion and the order granting the same is filed as Exhibits 1 and 2 to this petition and made a part of the same.

The grievance complained of is as to the holding of the Court of Appeals affirming the correctness of the charge herein set out. The reason relied on for a review of this holding is that the question of law involved is of great public importance especially to the medical profession throughout the country.

Wherefore, the foregoing matters being considered your petitioner prays that the Court will grant its writ of certiorari and supersedeas or a stay order staying the judgment of the

United States Circuit Court of Appeals for the Sixth Circuit until this petition is passed upon and requiring that Court to certify a full and complete transcript of the record in the above entitled cause to this court for review, and that this Court will, therefore, proceed to correct the errors complained of, reverse the judgment for the petitioner and remand the cause and give petitioner such other and further relief as the nature of the case may require and to the court may seem proper in the premises, and your petitioner will ever pray.

A. W. BOYD.

WHITAKER & FOUST,
For Petitioner.

Certificate.

I certify that I am attorney for and of counsel for the petitioner herein; that the allegations contained in said petition are true, and that said petition is, in my opinion, well founded in point of law.

SAM E. WHITAKER,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION.

The Court is asked in this petition to call up for a review on certiorari the construction by the Circuit Court of Appeals for the Sixth Circuit its interpretation and construction of the act of Congress which is known as the "Harrison Narcotic Act."

The subject matter involved is whether or not a prescription or prescriptions, given in good faith by a duly registered physician under the Harrison Narcotic Act, for more morphine contained in one or more prescriptions than is sufficient for one dose, a violation of said act.

It is our insistence that the cases of Webb *et al. v.* United States, 249 U. S. 96; Jin Fuey Moy *v.* United States, 254 U. S. 189; United States *v.* Behrman, 258 U. S. 280, in place of holding that a physician issuing a prescription for more morphine than is necessary for one dose is guilty of violating the Harrison Narcotic Act, holds quite to the contrary. In the Webb case the Court says:

> "But on the contrary it is plainly held that had the prescription or prescriptions been used in good faith and in the course of professional treatment in the attempted cure of the habit then Webb would not have been subject to the penalty of the Harrison Narcotic Act."

In the Jin Fuey Moy case the court says:

> "That he issued them to persons not his patients, and not previously known to him, professed morphine users, for the mere purpose, as the jury might find, of enabling such persons to continue the use of the drug or to sell it to others."

There is no such suggestion in this entire record against petitioner.

In the Behrman case the court says:

> "It may be admitted that to prescribe a single dose, or even a number of doses, may not bring a physician within the penalties of the Act; * * * Undoubtedly doses may be varied to suit different cases as determined by the judgment of a physician."

We submit that under these authorities decided by this honorable Court that the certiorari should be granted; that *this Court* may pass directly upon the question herein involved; that lawyers, and more particularly physicians, may have the last word on this controverted legal question under the Harrison Narcotic Act so that capable and well-ordered doctors throughout the country may know, without cavil or doubt, how to conform to this important and well-meaning Act of Congress.

If the conclusion reached in the Circuit Court of Appeals in this case is sound no doubt practically every physician throughout the country has infracted the Harrison Narcotic Act and could be subjected to its mortifying penalties.

Respectfully submitted,

WHITAKER & FOUST,
Attorneys for Petitioner.

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 95

DR. A. W. BOYD, Petitioner,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF COUNSEL FOR PETITIONER

WHITAKER & ROUST,

Attorneys for Petitioner.

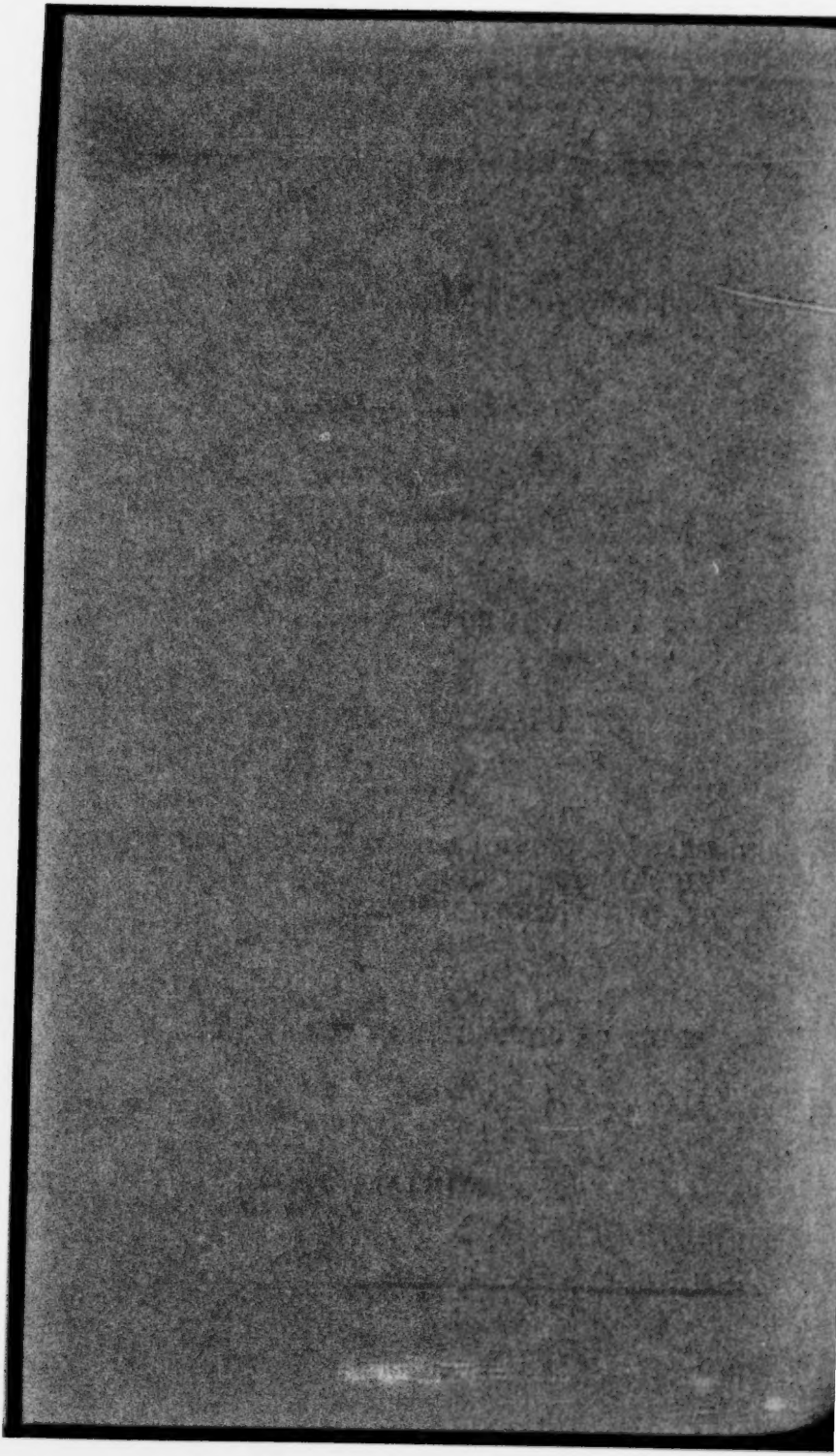

TABLE OF CASES

	Page
Webb, et al v. United States, 249 U. S. 96	10
Jin Fuey Moy v. United States, 254 U. S. 189	10
United States v. Behrman, 258 U. S. 280	10
Linder v. United States, Sup. Ct. Vol. 45, No. 13, May 1st, 1925, page 446	10

IN THE

Supreme Court of United States

OCTOBER TERM, 1925

No. 365

DR. A. W. BOYD, Petitioner,

versus

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF COUNSEL FOR PETITIONER.

May It Please the Court:

Dr. A. W. Boyd, a duly licensed and registered physician, (R. 14), was indicted and convicted in the United States Court of the Southern Division of the District Court of Tennessee at its November term, 1923, for violating section 2 of the Harrison Anti-Narcotic Act, and was fined and sentenced to the penitentiary.

R. 12, 13.

Petitioner, Dr. Boyd, interposed as a defense the "good faith doctrine."

The cause was duly and regularly taken to the Court of Appeals for the Sixth Judicial Circuit.

R. 13, 88, 90, 91, 92, 93, 94, 95.

This Court affirmed the sentence.

R. 95, 96.

From the action of the Court of Appeals petition for certiorari was duly filed and granted, bringing the case to this Honorable Court for review and the cause placed on the summary docket and advanced for argument on Monday, November 2nd, 1925.

R. 97.

STATEMENT OF THE CASE

Perhaps it would not be wholly out of order to give a *very* brief "statement of the case."

On the trial in the lower court the Government showed by its officers and druggists in Chattanooga, by way of prescriptions, a considerable use of narcotics by petitioner.

R. 14-19.

This was the only evidence offered by the Government tending to show a violation of the Act in question.

To offset this it was shown by the *Government's witnesses*, including the three set out in the indictment, that:

(1) Dr. Boyd thought he had a remedy for the relief and possible cure for morphinism.

R. 17.

(2) That his treatment for each one of the addicts set out in the indictment was beneficial to the patient, materially reducing the amount of morphine and restoring the patient from absolute invalidism to a working basis.

R. 20, 21, 22, 25, 32, 43.

Their testimony can be measurably summarized by the evidence of James Pinson, who was an overseas soldier, and contracted the habit of morphinism in the Government hospital. He states that he was a tubercular, and that since Dr. Boyd's treatment of him he has steadily improved, taking less and less morphine during Dr.

Boyd's treatment of him; that he was taking about ten grains a day when he went to Dr. Boyd and weighing about one hundred pounds; that his weight had been increased to one hundred thirty pounds by the administration of an anti-acid powder treatment intended as a corrective and a cure of the morphine habit, and that he had all but permanently relieved him.

R. 43, 44.

(3) That he treated them without price—that is to say, that if they didn't have the money for a prescription or didn't have the money for the acid known as 1, 2 and 3, or the money for dressing the sores or afflictions incident to their physical condition which brought on the morphine habit, that he would furnish the prescription and oftentimes the morphine and attend to healing the primary affliction without price—without charge for prescription for morphine or other medical attention.

R. 43, 44.

(4) That the amount of morphine used, and the number of prescriptions issued by Dr. Boyd depended upon the large number and condition of the patients he was treating, the number justifying the amount of morphine purchased and the number of prescriptions issued.

This closed the Government's testimony with the exception of the opinion of Doctors as to the best method for treating morphinism, and testimony as to petitioner's character.

As the defense was predicated on the "good faith doctrine," counsel for petitioner, on the close of the Government's testimony, moved the Court for a directed verdict on three specified grounds, the first being that there was no evidence to support the verdict for the Government, and the third, that the effort of the defend-

ant, Dr. A. W. Boyd, was a "good faith" effort in that he was administering morphine to his patients in an honest, professional undertaking to cure them of the morphine habit, etc.

R. 45.

Which motion was overruled, etc.

R. 45.

Whereupon, petitioner offered his proof. The first paragraph of petitioner's testimony is:

> "I am sixty-four years old. I have been living in Chattanooga thirty-seven years. * * * I have been a practicing physician thirty-nine years. Have practiced in Chattanooga thirty-seven years. In all my professional life I never sold or gave away or in any wise used morphine or other narcotics *except to use it for the purpose of my profession.* Never sold a grain in my life."

R. 45.

Then the petitioner proceeds to discuss treatment of morphinism from a professional point of view, and finally said:

> "I * * * treated at my own expense. I bought the drug and gave them. There are ninety of them, eighteen of which I cured. * * * * I treated them for the disease. * * * * I run about twenty or thirty addicts that I have treated on the general average. * * * * The amount of morphine shown by the Government given to these particular patients that I treated was absolutely necessary in the proper treatment." etc.

R. 47, 48.

Then again:

> "I have talked to the Doctors and told them of this discovery of mine. I said, 'Let's join together and cure these people'."
>
> R. 49.

Then again:

> "I have tried to treat them from a scientific professional point of view absolutely, as many as I could, without any regard for compensation."
>
> R. 49.

Then again:

In speaking of the amount of morphine prescribed to particular patients being about the same amount of morphine in each prescription for nearly a month and explaining why, this witness said:

> "Those conditions that show that they run the same for nearly a month was, as I told you before, that the County Physician had made an allowance of so much. He gave the druggist a card that this patient should have this amount for so many days. *If I wrote the prescription for any more or less they did not fill it. I had no will in it so I had to work on the patient and say 'Here, I don't want you to take this much.'* That was done so that they might have the necessary amount. They would not fill it if I wrote it for less." (The italics are ours.)
>
> R. 48.

This explains in "good faith" why these prescriptions continued at the same amount for the period of time appearing in the proof and in place of it being an evidence of "bad faith" it explains and shows evidence of "good faith."

Following this testimony Dr. Cooper Holtzclaw, the Nestor of the medical profession in Chattanooga, states:

> "Dr. Boyd has submitted to me his method of treatment of these morphine addicts, and I consider it a sound, sane, and successful treatment of the trouble."

R. 61.

Some of the addicts, who were witnesses for defendant, testify to the beneficial effects of Dr. Boyd's treatment, bringing them from invalidism to health and work.

R. 67, 69, 70, 72, 73.

This closed the proof, with the exception of some minor and immaterial controversies, and the varying opinion of Doctors as to whether or not the proper treatment of morphinism was by the "iron hand" or "gradual reduction process." At the end of all the testimony counsel for petitioner again moved the Court for a directed verdict for the same reason assigned at the close of the Government's proof.

R. 80, 81.

Which motion was overruled, etc.

WHEREUPON, the Trial Judge charged the jury, setting up at the outset of his charge with reasonable satisfaction the "good faith doctrine," and then proceeded to *destroy and set at naught* the "good faith doctrine" by charging the jury as follows:

> "I further instruct you in this case that if you believed beyond a reasonable doubt that these different parties, Annie Davis, O'Hara, O'Neil, Goodman, applied to this defendant Boyd for drugs or for prescriptions for drugs, and if you believe that beyond a reasonable doubt that this

defendant Boyd knew that they were addicts, *and* that although he was undertaking to cure them of the drug addiction, if you believe beyond a reasonable doubt that as to these patients or so-called patients or as to any of them, that he wrote for them these prescriptions or for any of them the prescriptions set out in the indictment, and that he wrote these prescriptions for excessive amounts of morphine, that is to say, excessive in this, that he wrote the prescriptions for amounts of morphine for a great number of doses of morphine, more than was sufficient for the necessity of any one particular administration of it, and that by virtue of his writing these prescriptions for these large amounts or excessive amounts of morphine, more than sufficient for any one particular administration of it, that this caused these prescriptions to be filled by the druggists and these excessive amounts of morphine to thus be put into the hands of an addict to be self-administered by them over a succeeding period of days, considerable number of days, with nothing to guide or direct the self-administration of that morphine except the weakened will of the addicts themselves, if you find such a state of facts as that, gentlemen, then the law declares that the defendant has violated the law, and as I say, it would be no defense to him, gentlemen, that the druggists would not fill the prescriptions for smaller amounts, because he would not be compelled to violate the law. He might dispense the morphine himself without the use of a prescription, but how the facts in this case are it is for you to determine as to the amounts of the prescriptions, whether written for more than was necessary for any particular administration, or whether more than was necessary was put into the unrestricted control of an addict with nothing to prevent them from taking it as directed except

> their own weakened will; how all these facts are it is for you to determine, gentlemen of the jury."
> R. 86.

The personal and professional character of Dr. Boyd, the petitioner, was abundantly established without any proof to the contrary.

R. 61, 65-71.

There is no evidence in the record which shows or tends to show that the petitioner tried to "dodge the law" and acted in "bad faith"; but on the contrary, all the evidence establishes that petitioner was wedded to the idea that he had a solvent for morphinism and was deeply anxious to demonstrate its efficacy.

There is no evidence that even tends to show that the parties for whom petitioner prescribed narcotics ever sold or intended to dispose of the drugs obtained through petitioner's prescriptions.

There is no evidence that shows or tends to show that petitioner ever prescribed narcotics for any person who was not his patient.

All the evidence shows that petitioner acted within ethical proprieties and that his prescription (his antidote for morphinism) was professional and "sound and sane."

This is a brief, correct summary of the facts, which may or may not have been stated, for the consideration of this Honorable Court. Counsel felt it proper to do so.

BRIEF AND ARGUMENT

We submit when the Trial Judge charged the jury, as herein set out, and the Court of Appeals affirmed the correctness of the charge, that both Courts misinterpreted the purposes and the scope of the HARRISON NARCOTIC ACT, and were, therefore, in fatal error.

R. 88, 89.

It is unusual that counsel for the Government and counsel for petitioner rely upon the same authorities for the correctness or incorrectness of this charge, each predicating their contention mainly on the following cases:

Webb et al v. United States, 249 U. S. 96;
Jin Fuey Moy v. United States, 254 U. S. 189;
United States v. Behrman, 258 U. S. 280.

Fortunately for the petitioner, the contention of his counsel, as we think, has been *since* sustained in the case of *Linder v. United States*, Sup. Ct. Vol. 45, No. 13, May 1st, 1925, page 446.

This opinion, it seems to us, makes it unnecessary to discuss the Webb, Jin Fuey Moy, or Behrman cases. Had this opinion been delivered by your Honors before the trial of the instant case this case no doubt would not have been before the Court for review.

In the Linder case the Court, speaking through Mr. Justice McReynolds, among other things, announces

what we conceive to be the fundamental rule marking the dividing line between the Government and the States, to-wit:

> "Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. And we accept as established doctrine that any provision of an Act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within power reserved to the States, is invalid and cannot be enforced."
>
> Ibid 449.

Then again Mr. Justice McReynolds uses the following language in said opinion with reference to the Behrman case, on which the Government predicated its insistence for a conviction of petitioner, to-wit:

> "The opinion cannot be accepted as authority for holding that a physician, who acts bona fide and according to fair medical standard, may never give an addict a moderate amount of drugs for self-administration in order to relieve conditions incident to addiction. Enforcement of tax demands no such drastic rule and if the Act had such scope it would certainly encounter grave constitutional difficulty."
>
> Ibid 450.

The Harrison Narcotic Act was held constitutional purely upon the ground of it being a Revenue Act and any effort to construe the Act beyond this purpose goes beyond the intention of Congress in passing it. If Congress had intended said Act as a penal Statute enacted for the purpose of directing and controlling the professional judgments of physicians throughout the country

in their effort to relieve their patients, the Act no doubt would have long since been declared unconstitutional.

Surely the law makers for the Government have never indulged the fanciful idea that they had the constitutional power to direct and control the professional judgment of physicians, and it is not surprising, but altogether reassuring, that this Court should have said in the Behrman case:

> "It may be admitted that to prescribe a single dose, or even a number of doses, may not bring a physician within the penalties of the Act; * * * Undoubtedly, doses may be varied to suit different cases as determined by the *judgment* of a physician."
>
> Ibid 55.288

The following portion of the charge of the Trial Court complained of we submit is equivalent to a positive direction to the jury to return a verdict of guilty in this case, and it assumes to control the judgment of a physician in the treatment of his patients:

> "If you believe beyond a reasonable doubt that as to these patients, or so-called patients, or as to any of them, that he wrote for them these prescriptions or for any of them the prescriptions set out in the indictment, and that he wrote these prescriptions for excessive amounts of morphine, that is to say, excessive in this, that he wrote the prescription for amounts of morphine for a greater number of doses of morphine, more than was sufficient for the necessity of any one particular administration of it, and that by virtue of his writing these prescriptions for these large amounts or excessive amounts of morphine, more than sufficient for any one particular administra-

> tion of it * * * and these excessive amounts of morphine to thus be put in the hands of an addict to be self-administered by them over a succeeding period of days, considerable number of days, with nothing to guide or direct the self-administration of that morphine except the weakened will of the addicts themselves, if you find such a statement of facts as that, gentlemen, then the law declares that the defendant has violated the law."
>
> R. 86.

This is just what this Honorable Court says in the Linder case is not the law. And this, of course, is what necessarily secured a conviction.

We confidently assume, therefore, this Court will reverse this case.

Respectfully submitted,

Sam E. WHITAKER ~~& FOUST,~~

Attorneys for Petitioner.

INDEX

	Page
Previous opinions in present case	1
Grounds of jurisdiction	1
Statement	2
Argument	14–35
I. The indictment in this case was sufficient in law, and was amply supported by the proof	14
II. The petitioner's case is founded upon an assignment of error not properly cognizable in this Court	16
III. On the assumption that the charge is properly before the Court for review, the Government submits that it contains no prejudicial error	19
IV. In the light of accepted medical standards, the charge of the Trial Judge was more favorable to the petitioner than he was entitled to demand	25
V. The record discloses a clear violation of the revenue provisions of the Harrison Act	30
Conclusion	35
Appendix A (tabulation of amount of morphine used by Doctor Boyd)	36
Appendix B (report of Committee on Narcotic Drugs of the American Medical Association)	39

CASES CITED

Beaver v. *Taylor*, 93 U. S. 46, 55	17
Commonwealth v. *Noble*, 230 Mass. 83	28
Exporters v. *Butterworth-Judson Co.*, 258 U. S. 365	17
Fillippon v. *Albion Vein Slate Co.*, 250 U. S. 76, 82	17, 18
Frey & Son v. *Cudahy Packing Co.*, 256 U. S. 208, 215	17
Harris v. *United States*, 273 Fed. 784, 789	18
Hyde v. *State*, 131 Tenn. 208	28
Jin Fuey Moy v. *United States*, 254, U. S. 189	4, 14, 15, 25, 29, 33
Knoop v. *State Board of Health*, 41 R. I. 283, 286	28
Linder v. *United States*, 268 U. S. 5	2, 4, 13, 14, 22, 23, 26
McDermott v. *Severe*, 202 U. S. 600, 610	17
Manning v. *United States*, 287 Fed. 800	25
Nobile v. *United States*, 284 Fed. 253, 256	18
O'Connell v. *United States*, 253 U. S. 142	17

Page

Rich v. *United States*, 271 Fed. 566, 570 18
Robinson & Co. v. *Belt*, 187 U. S. 41, 50 ..... 17, 19
Sevensma v. *United States*, 278 Fed. 401, 404 18
Simmons v. *United States*, 300 Fed. 321 25
United States v. *Balint*, 258 U. S. 250, 254 ..... 29, 32
United States v. *Behrman*, 258 U. S. 280 ..... 4, 6, 14, 15, 24, 25, 27
United States v. *Doremus*, 249 U. S. 86 ..... 29, 32
Webb v. *United States*, 249 U. S. 96 ..... 21, 25

TEXT BOOKS CITED

Journal of the American Medical Association, vol. 76, pt. 2, pp. 1669–1671 (see Appendix B, p. 39) 28

STATUTES CITED

Penal Code (Act of March 4, 1909, c. 321; 35 Stat. 1088), S. 332 .. 33
Judicial Code (Act of March 3, 1911, c. 231; 36 Stat. 1087):
S. 240 2
S. 269 (as amended by the Act of February 26, 1919, c. 48; 40 Stat. 1181) 18
Harrison Anti-Narcotic Act (Act of December 17, 1914, c. 1; 38 Stat. 785, as amended by secs. 1006–1007 of the Act of February 24, 1919, c. 18, 40 Stat. 1057, 1130) 2, 29, 31

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 365

DR. A. W. BOYD, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF ON BEHALF OF THE UNITED STATES

PREVIOUS OPINIONS IN THE PRESENT CASE

The *per curiam* opinion of the Circuit Court of Appeals, from which this case comes on writ of certiorari, is reported in 4 F. (2nd) 1014. It appears also at R. 96.

GROUNDS OF JURISDICTION

The judgment to be reviewed is that of the Circuit Court of Appeals for the Sixth Circuit, dated April 6, 1925, appearing at R. 95-96.

By this judgment the Circuit Court of Appeals affirmed the judgment of the District Court, con-

victing the petitioner of violation of the Harrison Anti-Narcotic Act. (Act of December 17, 1914, c. 1, 38 Stat. 785, as amended by Secs. 1006–1007 of the Act of February 24, 1919, c. 18, 40 Stat. 1057, 1130.)

This Court, on May 11, 1925, granted a writ of certiorari (26 — U. S. —), under Section 240 of the Judicial Code. (Act of March 3, 1911, c. 231, 36 Stat. 1087, 1157.)

STATEMENT

The petitioner, a physician duly registered under the provisions of the Harrison Anti-Narcotic Act, was indicted in the Eastern District of Tennessee for violation of Section 2 of that Act. The indictment (R. 1–11) contained thirteen counts, upon six of which (Counts 2, 3, 4, 11, 12, and 13) the petitioner was found guilty. Of these, Counts 2, 3, and 4 charged three sales of narcotics, on different days, to one Annie Davis. Counts 11, 12, and 13 charged three similar sales to one Frank O'Hara.

The exact language of the indictment is of considerable importance and serves to distinguish this case very clearly from that of *Linder* v. *United States,* 268 U. S. 5. Count Two is therefore set forth in full as an example. The other counts are similar.

> (R. 1–2.) The Grand Jurors aforesaid, upon their oaths aforesaid, do further find, charge and present; that in Hamilton County, Tennessee, and within the jurisdic-

tion of this Court, on the 13th day of August, 1923, A. W. Boyd, who was then and there a physician dispenser in opium, morphine, cocaine, and other narcotic drugs, specified in an Act of Congress approved December 17, 1914, and amendments thereto, and who had duly registered with the Collector of Internal Revenue of the United States for the District of Tennessee, and paid the special tax required of such physician dispensers under the aforesaid statute, did knowingly, wilfully and feloniously barter, sell, dispense, exchange and give away to one Annie Davis a quantity of a narcotic drug, to wit: 40 grains of morphine sulphate, which then and there consisted of opium and compounds and derivatives of opium, the said bartering, selling, exchanging, dispensing and giving away of the aforesaid morphine sulphate *not being in pursuance of a written order of the said Annie Davis on a form issued in blank for that purpose by the Commissioner of Internal Revenue of the United States,* in manner following, to wit: That the said A. W. Boyd, at the time and place aforesaid, did issue and dispense to said Annie Davis a certain prescription, in the following words and figures, to wit:

"AUG. 13, 1923.

"For Annie Davis, 4041 Cherry St., Age 38 years, Addict for 21 years, Incurable senility, Morphine Sulphate 40 grs. Sig. As directed.

(Signed) A. W. BOYD."

and the said morphine sulphate was dispensed and distributed by the said A. W. Boyd *not in the course of his professional practice only,* the said A. W. Boyd intending and believing that said prescription would be filled by the retail dealer in opium, morphine, cocaine, and other narcotic drugs, under the provisions of the Act aforesaid, and which said prescription was filled by Hennessee Bros. Pharmacy, a retail dealer as aforesaid, and the narcotics called for therein placed in the possession of the aforesaid Annie Davis as then and there intended by said A. W. Boyd; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

It will be seen that this indictment (unlike that in *Linder's case,* and unlike that in *United States* v. *Behrman,* 258 U. S. 280) expressly negatives the defense of "administration in the course of *bona fide* professional practice." In this respect, as will be shown hereafter, the indictment was amply supported by the proof. In point of law it is identical with the indictment sustained by this Court in the second *Jin Fuey Moy* decision, 254 U. S. 189.

It was conceded that the petitioner had written prescriptions substantially as set forth in all the counts on which he was found guilty. (R. 51–52.) It was proved that prescriptions corresponding in names, amounts, and dates to those charged in the indictment had been filled by the retail druggists

named in each count. (R. 18–19.) It was conceded that the petitioner had not received official order forms, as required by law, from any of the parties to whom drugs were dispensed. It therefore became a material issue whether or not the petitioner had acted in good faith in the course of his professional practice. The petitioner contended that he had so acted, and that he was honestly endeavoring to cure those who applied to him for prescriptions. The trial was conducted throughout by both sides upon the issue of good faith thus presented, and upon it the jury found a verdict against the petitioner.

An examination of the evidence discloses the utter lack of merit in the petitioner's claim of good faith. During the five months from May to September, 1923, the petitioner testified that he was giving treatment in his office to "an average of twenty to thirty patients." (R. 48, 52, 55–56.) To meet the requirements of these "patients" the petitioner, during these five months, purchased from three drug stores the enormous total of 36,300 half-grain tablets of morphine sulphate. (R. 23–25; cf. Appendix, *infra*, p. 36.) When asked, prior to trial, by a narcotic agent to produce his dispensation record, the petitioner stated that he had kept none. (R. 15.) Upon being asked to write down a list of his "patients," he was able to give only four names, and then "became very angry" and refused to give any list at all. (R. 16.) When confronted at the trial with the record of his purchases,

the petitioner became very badly confused, testifying first that he had purchased 17,000 tablets and then that he had purchased 3,600. (R. 51.) Finally he admitted having purchased 32,700 tablets before September 9th, 1923. (R. 51.) During this same period, in addition to the treatment administered in his office, he wrote 802 prescriptions for seventy-three other "patients," calling for more than 25,000 grains additional. (R. 52.)

One-fifth of a grain is the recognized normal dose of morphine. (Wood's U. S. Dispensatory, quoted in *United States* v. *Behrman,* 258 U. S. 280, 289.) On this basis the petitioner's office practice alone (not including the "prescriptions" which his patients had filled at drug stores) required the administration of 18,150 normal doses (3,630 grains) each month. Evidence was given (R. 24, 39) that the average reputable physician would require per month only *25 to 50 doses* (5 to 10 grains.) On this basis, therefore, the petitioner's requirements were *between three hundred and sixty and seven hundred times greater than those of the ordinary reputable physician.* Evidence was also given (R. 40) that six hundred grains *per year* would be as much as any doctor could use "under any conditions." The petitioner was using more than six times that amount *per month.* On this basis, therefore, his requirements remained more than *seventy times* the maximum possible for any physician *"under any conditions."*

The petitioner insisted, however, that he had discovered a cure for addiction. The efficacy of this cure is best demonstrated by the fact that one of his patients (the witness Annie Davis) had been coming to him for " treatment " for many years; but she was still so far from being cured that she required a forty-grain " prescription " every five or six days. (R. 26–27. Indictment, Counts 2–4, R. 1–4.) (It may be taken as established by the testimony of the Government's experts (R. 33, 39) and by the admissions of the petitioner himself (R. 51, 52) that morphine could not possibly be a proper treatment for the disease (asthma) indicated on Annie Davis's prescriptions. The petitioner himself did not seriously contend that he administered the drug to her as a cure for asthma or for any other disease. He stated he was doing it to " get her off of hyocine " (R. 51), and added:

> She was using all the morphine she could get. (R. 52.)

The petitioner claimed to have treated ninety patients, of whom he declared he had cured eighteen. (R. 47, 52.) Nearly all of the patients, however, who appeared as witnesses, either for the prosecution or for the defense, testified that they were still addicted. The witness Ellington, it is true, testified point-blank that he was "cured." (R. 68.) But immediately after giving this testimony, he was examined in the hall of the courthouse by two

physicians, who subsequently testified that he was *not* cured, that, on the contrary, he was still an addict and had that very morning received an injection of morphine. (R. 75–78.) As a result of this testimony, Ellington was lodged in jail. (R. 77.)

The course of "treatment" consisted in giving the patient a bottle of an anti-acid mixture or tonic compounded by the petitioner, together with a prescription for morphine to be filled by a druggist. (R. 45–51.) Both the tonic and the morphine were entrusted absolutely to the control of the addict, who was at liberty to take either or both in such quantities and at such times as he wished. The result of this lack of supervision in the "treatment" is shown by the case of Stella McRay, who testified (R. 42):

> During this time I was getting morphine from him, when he got me down so low I got from somebody else, that is, down to ten grains. I sent a maid down to dark town to get it from bootleggers. Dr. Boyd did not give me any large bottles. He gave me a tonic, a bottle about that long. *I would take the tonic off some place and set it down, because I believed the tonic killed the morphine. I wouldn't take it.* I did not tell Dr. Boyd I wasn't taking it. He didn't know that. I would not come back with the bottle and get more; he would give me a new bottle. I guess I got between seventy-five and fifty bottles of that from him during the five months. I certainly believe he cut me down

> as low as ten grains a day. I couldn't stand it that low. I went to somebody else.

The witness Thompson, called by the defense, testified that he also would sometimes obtain an additional supply of drugs from other sources. (R. 73.)

The amount of morphine prescribed in each case sometimes remained constant, and sometimes increased. Thus the witness Annie Davis, on August 2nd, 1923, received a prescription for 48 grains, or 240 normal doses. (R. 26.) This lasted her until August 9th—an average of seven grains per day. On August 9th she received another prescription for 48 grains, which lasted only until August 13th—an average of *twelve* grains per day. (R. 26.) On August 13th she returned and obtained a third prescription. (R. 26.) Similarly, the witness O'Hara was started by Dr. Boyd on a treatment calling for eight grains per day. After eight months' treatment he had been reduced to "about seven or eight grains." (R. 31.) And after three years he was still receiving 28 grains every six days. (R. 32.) The patient Hazel Will was under treatment from May to October, 1923, and was not reduced at all. (R. 58.) When called upon to explain these facts the petitioner declared (R. 58):

> I have been persecuted by the public, local officers, and everybody, and yet I tried to help them, and if you find one not improved I will change my plea, *improved in the amount of morphine.*

Then (apparently realizing that this statement could scarcely be justified, in view of the evidence), he at once corrected himself, adding (R. 58):

> It doesn't matter; *it isn't the amount of morphine; it is their condition.*

The medical witnesses called by the prosecution testified unhesitatingly that the petitioner's treatment was, from a medical standpoint, utterly worthless. (R. 34, 38–40.)

Dr. Williamson testified (R. 38):

> The treatment for morphinism or drug addiction is to take it away from them. That is the recognized treatment. While I was connected with drug addicts at the city clinic I made a special study of the disease. *It is recognized by the medical practice that what is known as a perambulatory treatment is an unsuccessful and useless effort.* You can not control a patient if he is getting morphine promiscuously and taking it as he pleases.

Even the witnesses for the defense, including the petitioner himself, were driven to the same conclusion. Dr. Holtzclaw, a defense witness of unquestioned standing and high reputation, declared on cross-examination (R. 64):

> I doubt it very materially that any ordinary addict suffering with any disease or not suffering from any other disease, ever could be cured while the narcotic drug was placed in his hands in quantities of thirty, forty,

> and forty-eight grains in his unrestricted control.

These amounts were shown to have been administered by the petitioner to his patient, Annie Davis, and others. Dr. Holtzclaw went on to say (R. 65):

> He says it is so easy. I will give him another dose, and they give him hypodermic doses, but it is too much trouble to run there all the time, and they give him a little in the bottle. *That doctor who did that is also ignorant or incompetent, if he lets him have any to carry off with him.* * * * I say, let him remove the cause and the patient will get well by himself, *and see to it that he don't get any morphine to pack off with him, because morphine is the worst thing he can possibly take.*

The defendant's own testimony is a mass of contradictions and evasions. He had a chemist who was engaged at his request in analyzing the poison caused by morphine addiction; but he was uncertain as to this chemist's name. (R. 49.) He declared first that he could not, and then that he could, withdraw the allowance of morphine from his patient, James Pinson. (R. 50.) He admitted that he was "not doing a general practice" (R. 51), and later stated (R. 58):

> in the course of the practice of medicine only, I wouldn't use one bottle containing 100 half grain tablets in a year.

He was unable to explain why he gave *twenty* patients 32,000 tablets between May and Septem-

ber, while prescribing over 25,000 tablets for *seventy-three* other patients during a longer period. (R. 56.) He was driven finally to admit the complete ineffectuality of any "treatment" which did not include close supervision by the physician over his addicted patients, saying:

> (At R. 54.) They were cured if I could have kept them under my control, but they get out and get drunk and take it again.
>
> (At R. 59, on redirect examination.) I absolutely regarded it as a part of my professional duty to write these prescriptions in aid of my treatment for the morphine habit. I cut them down half of the amount they were taking when they came to me *and personally administered it.* I want to correct that. If his condition was such that he could not exist, I would again increase. But I never took his word for it. That is why I administered it personally. *That is not why I gave prescriptions. I couldn't cut down the prescriptions half because I wouldn't see the patient often. When* I am administering it myself he returns and I see him. *The party with the prescription goes away and I don't see them.*

The charge of the Trial Judge (save for one portion hereafter discussed) is conceded by petitioner to have been satisfactory. The Judge pointed out that the petitioner was entitled to an acquittal if he had acted in good faith in the course of his professional practice. (R. 84.) He added (R. 84.):

> If that question is left reasonably doubtful as to whether he did it in good faith *for the purpose of curing disease or relieving suffering or otherwise,* then the defendant would be entitled to the benefit of the doubt, and entitled to an acquittal.

At the end of the charge he added (R. 88):

> I am requested to say to you, gentlemen, that in determining whether or not the defendant prescribing morphine to his patients was honestly seeking to cure them of the morphine habit while applying his curative remedies, it is not necessary for the jury to believe that defendant's treatment would cure the morphine habit; but it is sufficient if defendant honestly believed his remedy was a cure for this disease.
>
> I instruct you that if that is true, *regardless of whether the course of treatment given by this defendant is a cure, the question is, was he honestly and in good faith in the course of his professional practice* and in an effort to cure disease issuing these prescriptions.

A verdict of guilty was returned, and the petitioner was sentenced to fine and imprisonment. (R. 13.) The judgment was affirmed by the Circuit Court of Appeals, and the case is now here on writ of certiorari. The sole question raised by the petitioner involves a portion of the Trial Judge's charge, to which no exception was taken at the time of trial, but which is now claimed to be contrary to the decision of this Court in *Linder* v. *United States,* 268

U. S. 5. The Government submits that this language, considered in connection with the evidence and with the rest of the charge, was eminently fair to the petitioner and is in no way contrary to the decision in *Linder's case*. The record discloses ample proof of violation of the Harrison Act from the standpoint alike of morals and of revenue, and the conviction of the petitioner should be sustained.

ARGUMENT

SUMMARY

I. The indictment in this case was sufficient in law and was amply supported by the proof.

II. The petitioner's case is founded upon an assignment of error not properly cognizable in this Court.

III. On the assumption that the charge is properly before the court for review, the Government submits that it contains no prejudicial error.

IV. In the light of accepted medical standards, the charge of the trial judge was more favorable to the petitioner than he was entitled to demand.

V. The record discloses a clear violation of the revenue provisions of the Harrison Act.

I

The indictment in this case was sufficient in law and was amply supported by the proof.

As already pointed out, the indictment in this case presents no difficulties. It is similar to the indictment approved by this Court in the second *Jin Fuey Moy* decision, 254 U. S. 189. Unlike the indictments in *Linder* v. *United States*, 268 U. S. 5, and *United States* v. *Behrman*, 258 U. S. 280, it contains in each count an express allegation that the dispensing of the drug was "*not in the course of the defendant's professional practice only.*" In

Behrman's case, the dissenting opinion appears to have criticized the absence of just such an allegation (258 U. S., at p. 290):

> Of course the facts alleged suggest an indictment in a different form, but the Government preferred to trust to a strained interpretation of the law rather than to the finding of a jury upon the facts.

In the case at bar the indictment was prepared "in a different form," and the finding of the jury upon the facts has sustained its allegations.

The proof, already discussed at length, was ample to sustain the verdict. The petitioner admitted (R. 46, 48) having given the prescriptions alleged. The enormous volume of his traffic in narcotic drugs, and the utter worthlessness of his "cure," are ample to warrant a finding of bad faith. As this Court declared in *United States* v. *Jin Fuey Moy,* 254 U. S. 189, 194:

> Manifestly the phrases "to a patient" and "in the course of his professional practice only" are intended to confine the immunity of a registered physician, in dispensing the narcotic drugs mentioned in the act, strictly within the appropriate bounds of a physician's professional practice, and not to extend it to include a sale to a dealer or a distribution intended to cater to the appetite or satisfy the craving of one addicted to the use of the drug. A "prescription" issued for either of the latter purposes protects neither the physician who issues it nor the dealer who

knowingly accepts and fills it. *Webb* v. *United States*, 249 U. S. 96.

It is submitted that, upon the indictment and proof, the guilt of the petitioner was clearly established. His sole argument in this Court is directed, however, to another point; namely, to a portion of the Trial Judge's charge. This will now be discussed.

The petitioner's case is founded upon an assignment of error not properly cognizable in this Court.

In this case the petition for certiorari was based upon a single ground; namely, upon error in a portion of the Trial Judge's charge to the jury. (R. 89.) *No exception was taken at any time to this or to any other portion of the charge.* At the trial it was allowed to pass unnoticed, presumably because counsel at that time regarded the charge as fair to their client and were unable to detect any error therein. The alleged error was only discovered and brought to the attention of the Trial Judge on a motion for a new trial after a verdict of guilty had been rendered. When the motion for a new trial was denied, this assignment of error was incorporated in a bill of exceptions, and by this means it was brought up to the Circuit Court of Appeals and to this Court.

As this Court has often pointed out, errors in the charge of a trial judge must be specifically called to his attention *before the jury retires from the bar,* in order that he may have an opportunity

to correct them on the spot, and thus to prevent a mistrial.

As was said in *Fillippon* v. *Albion Vein Slate Co.,* 250 U. S. 76, 82:

> It is not correct, however, to regard the opportunity of afterwards excepting to the instruction and to the manner of giving it as equivalent to an opportunity to be present during the proceedings. To so hold would be to overlook the primary and essential function of an exception, which is to direct the mind of the trial judge to the point in which it is supposed that he has erred in law, so that he may reconsider it and change his ruling if convinced of error, and that injustice and mistrials due to inadvertent errors may thus be obviated. *United States* v. *U. S. Fidelity Co.,* 236 U. S. 512, 529; *Guerini Stone Co.* v. *Carlin Construction Co.,* 248 U. S. 334, 348.

To the same effect are *Exporters* v. *Butterworth-Judson Co.,* 258 U. S. 365; *Frey & Son* v. *Cudahy Packing Co.,* 256 U. S. 208, 215; *O'Connell* v. *United States,* 253 U. S. 142; *McDermott* v. *Severe,* 202 U. S. 600, 610; *Robinson & Co.* v. *Belt,* 187 U. S. 41, 50; *Beaver* v. *Taylor,* 93 U. S. 46, 55.

The importance of timely exceptions to the charge has not been lessened by the amendment to Section 269 of the Judicial Code, authorizing courts to give judgment on appeal "without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

(Act of Feb. 26, 1919, c. 48, 40 Stat. 1181.) *Fillippon* v. *Albion Vein Slate Co.,* supra; *Nobile* v. *United States,* 284 Fed. 253, 256; *Sevensma* v. *United States,* 278 Fed. 401, 404; *Harris* v. *United States,* 273 Fed. 784, 789; *Rich* v. *United States,* 271 Fed. 566, 570.

The rules of this Court expressly provide (Rule 7 (1)):

> No bill of exceptions shall be allowed on a general exception to the charge of the court to the jury in trials at common law. The party excepting shall be required *before the jury retires* to state distinctly the several matters of law in such charge to which he excepts; and no other exceptions to the charge shall be allowed by the court or inserted in a bill of exceptions.

In the case at bar, the alleged error in the charge was in no way brought to the attention of the judge until after a verdict had been rendered. It was then, of course, too late to correct it. An assignment of error predicated thereon has no proper place in any bill of exceptions. The Circuit Court of Appeals accordingly declared in this case that the charge was not properly before it for review. 4 F (2nd) 1014 (R. 96). It is submitted that this declaration was correct. Frequent mistrials can only be avoided if alleged errors are brought directly to the attention of trial Courts while opportunity for correction still exists. "Their action should not be reversed upon questions which the

astuteness of counsel in this court has evolved from the record." *Robinson & Co.* v. *Belt,* 187 U. S. 41, 50.

In criminal cases, the same rule remains applicable, especially when, as in the case at bar, the evidence overwhelmingly points to the guilt of the defendant. If needless retrials and inordinate delays of justice are to be avoided, objections must be taken in proper time. It is the clear duty of counsel to point out specific errors in the charge, and to request that they be corrected, before it is too late. Objections taken after a verdict of guilty give no opportunity for prompt correction, and serve only to perpetuate error in the record.

It is accordingly suggested that this Court should decline to consider the assignment of error directed to the charge of the Trial Judge. And since it is upon this assignment alone that the petitioner's whole case is founded, it is submitted that the writ of certiorari should be dismissed.

III

On the assumption that the charge is properly before the Court for review, the Government submits that it contains no prejudicial error.

The portion of the charge upon which the petitioner's case is founded is as follows (R. 86, 89):

> I further instruct you in this case that if you believe beyond a reasonable doubt that these different parties, Annie Davis, O'Hara, O'Neil, Goodman, applied to this defendant

Boyd for drugs or for prescriptions for drugs, and if you believe that beyond a reasonable doubt that this defendant Boyd knew that they were addicts, and that although he was undertaking to cure them of the drug addiction, if you believe beyond a reasonable doubt that as to these patients or so-called patients or as to any of them, that he wrote for them these prescriptions or for any of them the prescriptions set out in the indictment, *and that he wrote those prescriptions for excessive amounts of morphine,* that is to say, excessive in this, that he wrote the prescriptions for amounts of morphine *for a great number of doses of morphine,* more than was sufficient for the necessity of any one particular administration of it, and that by virtue of his writing these prescriptions for these large amounts or excessive amounts of morphine, more than sufficient for any one particular administration of it, that this caused these prescriptions to be filled by the druggists and these *excessive amounts of morphine* to thus be put into the hands of an addict to be self-administered by them *over a succeeding period of days, considerable number of days,* with nothing to guide or direct the self-administration of that morphine except the weakened will of the addicts themselves, if you find such a state of facts as that, gentlemen, then the law declares that the defendant has violated the law, and, as I say, it would be no defense to him, gentlemen, that the druggists would not fill the prescriptions

> for smaller amounts, because he would not be compelled to violate the law.

In other portions of the charge, quoted *supra,* p. 13, the jury were very clearly instructed that good faith was a complete defense. They were told that the petitioner would be entitled to an acquittal (R. 84)—

> if that question is left reasonably doubtful as to whether he did it in good faith *for the purpose of curing disease or relieving suffering or otherwise.*

They were further instructed that it would be proof of guilt if they found that he had given the prescriptions (R. 85)—

> not as a physician in the course of his professional practice only, but simply as a commercial proposition to make money for himself or simply to satisfy the cravings of an addict for drugs.

The portion of the charge last quoted was in accordance with the decision of this Court in *Webb* v. *United States,* 249 U. S. 96, 99–100. It is submitted that the portion of which the petitioner complains must be considered in relation to the charge as a whole. Taken as a whole, the charge fully and fairly presents the issue of good faith, and contains no error. The jury could not possibly have been misled.

Even when considered piece by piece, the charge is still correct. The petitioner's argument is based upon the supposed repugnance between the portion

of the charge already quoted (*supra*, pp. 19–21) and the decision of this Court in *Linder's case*, 268 U. S. 5. It is submitted that no such repugnance exists.

In *Linder's case*, the indictment did not "question the doctor's good faith nor the wisdom or propriety of his action according to medical standards." It did not allege "that he dispensed the drugs otherwise than to a patient in the course of his professional practice or for other than medical purposes." It was upon these defects in the indictment that Linder's counsel almost entirely relied; and upon them the decision of this Court was largely based. In the case at bar, the indictment directly challenged Dr. Boyd's good faith, and directly denied that he administered the drugs in the course of his professional practice. No question of its insufficiency is raised.

In *Linder's case*, moreover, the indictment charged the defendant with giving away *four* tablets containing morphine and cocaine. The proof (Record in No. 183, Oct. Term, 1924, at p. 111) apparently showed that he had given away but *three*, containing ½ grain each, or between 7 and 8 normal doses in all. In the case at bar the indictment *and proof* alike show that the petitioner prescribed to one of his "patients" (Annie Davis), during a period of eleven days, the enormous total of 136 grains, or 680 normal doses. (R. 26; Indictment, Counts 2–4.) And in addition to this he was dispensing enormous quantities to many others.

In *Linder's case* this Court declared that "the facts disclosed indicate no conscious design to violate the law." In the case at bar, proof of such a design is given by the appalling volume of the petitioner's traffic in drugs, coupled with his refusal to give any list of his "patients" (R. 16), by his inability to give any coherent account of his purchases (R. 51–52), and by the overwhelming evidence of reputable physicians as to the worthlessness of his "cure" (*supra*, pp. 10–11).

In the portion of the charge to which exception is taken, the Court nowhere denied the right of a physician to prescribe "moderate amounts of drugs for self-administration in order to relieve conditions incident to addiction." (*Linder* v. *United States*, 268 U. S. 5, 22.) On the contrary, in the portion of the charge above quoted (p. 13) the Court expressly recognized that right. Similarly the Court clearly recognized "that the accused doctor might have lawfully dispensed some doses." (*Linder's case*, at p. 20.)

What the Court said was this (R. 86):

> [the verdict must be guilty if you believe] * * * that he wrote those prescriptions for *excessive amounts of morphine*, that is to say, excessive in this, that he wrote the prescriptions for amounts of morphine *for a great number of doses* of morphine, more than was sufficient for the necessity of any one particular administration of it * * * to be self-administered by them over a suc-

ceeding period of days, *considerable number of days.*

This is not a denial of the right of a doctor to prescribe *moderate* amounts of narcotics for his patients. It is not a denial even of the right of a doctor to give narcotics to his patients for self-administration, if necessary. It is a denial only of the right to prescribe *excessive* amounts for self-administration over a *considerable number of days,* without guidance or control by the physician. This was the practice condemned in *United States* v. *Behrman,* 258 U. S. 280; and in the case at bar the principal witness for the defense declared that any physician who followed it was " ignorant or incompetent." (R. 65.)

The facts of this case disclosed no dispensing of " *moderate* " amounts of morphine. They disclosed exactly what the charge declared—the dispensing of *excessive* amounts *for a great number of doses* to be administered *over a considerable number of days,* without any attempt at supervision or control. The petitioner himself admitted (R. 54, 59, *supra,* p. 12) that he exercised no control over his " prescription " patients, at least two of whom (Annie Davis and Frank O'Hara) were proved to have been coming to him for " treatment " for several years.

The latter of these received 28 grains, or 140 normal doses, regularly every six days. (R. 32.) The former, in eleven days, from August 2nd to

August 13th, received 136 grains, or 680 normal doses. (R. 26.)

It is in the light of these facts, and of the others already discussed (*supra*, pp. 5–12) that the charge must be considered; and in that light, every word of it was justified. There was evidence to show that patients received prescriptions for " a great number of doses," and there was evidence to show that these doses were to be self-administered, contrary to all standards of medical practice, " over a considerable number of days." That evidence, it is submitted, warranted a verdict of guilty; and the charge was in full accordance with the decisions of this Court.

United States v. *Behrman*, 258 U. S. 280.
United States v. *Jin Fuey Moy*, 254 U. S. 189.
United States v. *Doremus*, 249 U. S. 86.
Webb v. *United States*, 249 U. S. 96.
Simmons v. *United States*, 300 Fed. 321.
Manning v. *United States*, 287 Fed. 800.

IV

In the light of accepted medical standards, the charge of the trial judge was more favorable to the petitioner than he was entitled to demand.

The record in this case shows that the petitioner relied, at the trial, upon a claim of good faith based upon the so-called " ambulatory method " of curing drug addicts. This was, in fact, the only color of defense which was open, under the evi-

dence. It was urged at the trial, and it is urged by counsel here, that the "ambulatory treatment" is an altogether proper method of cure, and that any doctor who follows it is to be considered as engaged in good faith in the course of his professional practice. This view was apparently accepted by the Trial Court, with the limitation that the amounts dispensed by the "ambulatory treatment" must not be "*excessive,*" nor sufficient to form a supply for self-administration "*over a considerable number of days.*"

The Government, however, submits that the "ambulatory treatment" may properly be regarded as constituting, *per se,* an unprofessional and illegal method of practice, which can not be defended by reference to any accepted medical standards. And if this is true, then the Trial Judge might properly have charged the jury that it was unlawful, *under the facts disclosed,* not merely to prescribe *excessive* doses for self-administration, but to prescribe *any doses at all.* From this aspect, the charge which was actually given, instead of being prejudicial to the petitioner, may be regarded as more favorable than he was entitled to demand.

At the outset, it should be made clear that this contention of the Government in no way conflicts with the decision of this Court in *Linder's case.* No overruling of that decision is sought.

In *Linder's case,* this Court was not confronted with the "ambulatory treatment," or with any-

thing akin to it. That case is authority for the proposition that a physician may lawfully prescribe—

> moderate amounts of drugs for self-administration *in order to relieve conditions incident to addiction.*

The "ambulatory treatment" is something altogether different from this. That treatment consists in constantly prescribing narcotics (usually as in the case at bar, in large quantities, sufficient for several days' supply) for self-administration by addicts, *not* for the purpose of relieving conditions incident to addiction, but in the futile hope that the patients may effect their own cure. The two practices are altogether distinct; and merely because self-administration may be proper in the one case, it is not necessarily proper in the other.

The worthlessness of the "ambulatory treatment" is to be found, of course, in the weakened will of the patient. It is useless to expect him to effect his own cure, when a more or less constant supply of the drug is placed in his own hands, and when, in the administration of it, he is placed beyond professional guidance or control. *United States* v. *Behrman,* 258 U. S. 280, 289.

Every physician who testified in the case at bar unhesitatingly declared that the "ambulatory treatment," as a cure, was utterly futile and unprofessional. The petitioner's own witness, Dr. Holtz-

claw, was of the same opinion, and the petitioner himself was driven to admit that this opinion was correct. This testimony has already been reviewed in full (*supra,* pp. 10–12) and need not be repeated here. Two additional facts may be noted. The committee of the American Medical Association, appointed to investigate this very subject, has officially reported that the " ambulatory treatment " is *per se* a violation of professional standards, and has recommended to both Federal and State authorities the adoption of the most stern measures to punish, as criminals, all physicians who attempt to follow it. Their report (contained in the Journal of the American Medical Association) is quoted at length in Appendix B to this brief (*infra,* p. 39). And the Supreme Courts of at least three States (including the State where this petitioner resides) have declared that the practice of the " ambulatory treatment " constitutes sufficient cause for revoking the license of the physician who follows it, or for punishing him as a criminal.

Commonwealth v. *Noble,* 230 Mass. 83.

Knoop v. *State Board of Health,* 41 R. I. 283, 286.

Hyde v. *State,* 131 Tenn. 208.

It must be conceded, of course, that the Federal Government is without power to regulate the practice of medicine in the States. But it is clear that Congress, in enacting a revenue statute, may properly impose one tax upon *physicians* and another upon *dealers* in narcotic drugs. *United States* v.

Balint, 258 U. S. 250; *United States* v. *Doremus,* 249 U. S. 86. And in defining the exemption conferred upon "*physicians*" under the Anti-Narcotic law, Congress has properly limited that exemption to registered physicians who dispense narcotics *in the course of their professional practice only.* Act of Dec. 17, 1914, c. 1; s. 2 (38 Stat. 785, 786).

Obviously the mere fact that an individual is a physician confers no immunity from the restrictions imposed by the Act. Otherwise any physician, by virtue of his status alone, would be at liberty to sell or to give away unlimited quantities of drugs to all comers, precisely as Dr. Jin Fuey Moy was charged with doing. *United States* v. *Jin Fuey Moy,* 254 U. S. 189.

If the words of the statute—" in the course of his professional practice only "—are to be given any meaning at all, they must be taken as incorporating into the statute a reference to existing reasonable medical standards. That Congress has power to make such a reference can not be questioned. Physicians, in other words, are privileged only so long as their conduct approximately follows the reasonable standards of their profession. The " ambulatory treatment " of curing addicts has been declared by competent medical authority, and has been proved by testimony in the present record, to be a violation of those standards. It has been outlawed by the medical profession itself. It is submitted that a physician who follows it should be no more entitled to plead " professional

practice " than one accused of murder should be entitled to plead his belief in euthanasia.

Upon this theory, therefore, it would be unlawful to prescribe narcotics in any quantity for self-administration *with a view to effecting a cure of drug addiction, and not with a view to relieving conditions incident to addiction.* The petitioner's colorable purpose—at least according to his own claims—was clearly to effect a cure. It follows, therefore, that the Trial Judge might properly have gone further than he actually did go. He might have charged that it would be unlawful to prescribe *any amount* (whether excessive or not) in the manner and with the purpose here shown. And if the prescribing of a single dose under the " ambulatory treatment " is unlawful, the petitioner clearly can not complain of a charge which permits him to prescribe such doses so long as they are not " excessive." In this view of the law the charge was more favorable than the petitioner had any right to demand.

V

The record discloses a clear violation of the revenue provisions of the Harrison Act.

This Court has on several occasions declared that the Harrison Anti-Narcotic Act depends for its constitutionality upon the fact that it is a revenue measure, and that its penal provisions can be supported only as aids in the collection of a tax. It seems desirable, therefore, to point out the man-

ner in which the revenue features of the Act have been violated in this case.

Section 2 of the Act provides (Act of December 17, 1914, c. 1, 38 Stat. 785, 786):

> That it shall be unlawful for any person to sell, barter, exchange or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. * * * Nothing contained in this section shall apply—
>
> (*a*) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only. * * *
>
> (*b*) To the sale, dispensing, or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act. * * *

Section 1 of the Act (as amended by S. 1006 of the Act of February 24, 1919, c. 18, 40 Stat. 1057, 1130) provides for a tax of $3 per annum upon registered physicians, and for a different and higher tax upon dealers; namely, $12 per annum upon wholesalers, and $6 per annum upon retailers.

The purpose of Section 2 is to secure "a close supervision of the business of dealing in these dan-

gerous drugs by the taxing officers of the Government." *United States* v. *Balint,* 258 U. S. 250, 254. It is obvious that Congress intended to draw a sharp line between *physicians* and *dealers.* To the *physician,* dispensing in good faith in the course of his professional practice, was accorded a special exemption from the requirement of obtaining official order forms. To the *dealer,* dispensing on a physician's prescription, was accorded a similar exemption. But the two classes remain distinct. Each must dispense drugs according to the rules of his own profession, if he is to remain taxable as a member of that profession. If a physician, under cloak of his practice, dispenses drugs without regard to accepted medical standards, and in quantities enormously exceeding those usually dispensed by physicians, he ceases to be taxable as a physician, and becomes taxable as a dealer.

Another danger was recognized by this Court in *United States* v. *Doremus,* 249 U. S. 86, 94-95:

> This case well illustrates the possibility which may have induced Congress to insert the provisions limiting sales to registered dealers and requiring patients to obtain these drugs as a medicine from physicians or upon regular prescriptions. Ameris, being as the indictment charges an addict, may not have used this great number of doses for himself. He might sell some to others without paying the tax, at least Congress may have deemed it wise to prevent such possi-

ble dealings because of their effect upon the collection of the revenue.

The amount of drugs which Doremus was charged to have dispensed to Ameris was five hundred one-sixth grain tablets of heroin. In the case at bar, Annie Davis received one hundred and thirty-six grains in eleven days. (R. 26.) O'Hara received twenty-eight grains every six days. (R. 32.) Obviously the same danger of illicit resale which was present in the *Doremus case* was present also in the case at bar.

It may, of course, be objected that the petitioner in this case did not himself sell the narcotic drug. He merely issued prescriptions which were subsequently filled by druggists. It would seem clear, however, that this course of conduct makes him liable as a principal in the sale, under Section 332 of the Penal Code. *United States* v. *Jin Fuey Moy,* 254 U. S. 189. By the wholesale dispensing of *prescriptions,* as well as by the wholesale dispensing of the drugs themselves, without any regard to accepted medical standards, a doctor properly may be regarded as a dealer. And if he fails to register and pay the dealer's tax, he may be properly indicted under the statute.

The Government recognizes that the standards of a physician's practice can not be measured by iron rules. There are reasonable limits which neither judge nor jury can invade, within which the needs and discretion of the individual physi-

cian are supreme. But it is submitted that all reasonable limits have been passed in this case. If the petitioner had contented himself with dispensing the same amount of narcotics as other physicians—if he had dispensed twice, five times, or even ten times that amount—he might still have laid claim to good faith, and might still have been regarded as engaged in the legitimate practice of his honorable profession. But when, in defiance of all medical standards, he embarked upon a course which required the dispensing of between three hundred and seven hundred times the amount needed by ordinary physicians, administered to patients whom he admits to have been beyond his supervision or control, he then ceased to be a physician save in name only. He became, to all intents, a dealer and should have registered and paid the dealer's tax.

To hold otherwise would obliterate the lines drawn by Congress, and would render the Harrison Act utterly unenforceable, not merely as a police regulation but as a measure designed for the raising of revenue. If this petitioner has not exceeded the permissible limits of a physician's *bona fide* practice, it is impossible to conceive of any case where those limits can ever be exceeded. If every doctor in the United States is at liberty to prescribe twenty thousand doses a month (R. 52), to "patients" over whom he has no control, and who are free to administer the drug to themselves or to sell

it to others, it will be utterly impossible for the Government either to trace the drugs or to collect its revenues. Dealers' taxes will hardly ever be paid; for every registered physician can successfully claim the right to act as a dealer. All barriers of law will be broken down; and utter confusion will result.

CONCLUSION

It is therefore respectfully submitted that the judgment of the Circuit Court of Appeals, affirming the petitioner's conviction, should be affirmed by this Court.

WILLIAM D. MITCHELL,
Solicitor General.
WILLIAM J. DONOVAN,
Assistant to the Attorney General.

NOVEMBER, 1925.

Appendix A

Tabulation of the amount of morphine consumed in Dr. Boyd's *office practice* during the five months May-September, 1923 (in addition to prescriptions filled for patients). This was the period covered by the indictment.

Purchases from Read House Pharmacy (R. 23):

May 13	1,200	½	grain	tablets
May 17	1,200	"	"	"
May 21	1,200	"	"	"
May 26	1,200	"	"	"
June 2	2,400	"	"	"
June 10	1,200	"	"	"
June 25	1,200	"	"	"
July 11	1,200	"	"	"
July 15	1,200	"	"	"
July 21	1,200	"	"	"
July 25	700	"	"	"
July 27	1,200	"	"	"
August 5	1,200	"	"	"
August 9	1,200	"	"	"
August 14	1,200	"	"	"
August 19	1,200	"	"	"
August 28	1,100	"	"	"
September 3	1,200	"	"	"
September 15	1,200	"	"	"
September 20	1,200	"	"	"
September 30	1,200	"	"	"

Purchases from Fritz & Well Drug Co. (R. 24):

August 2	100	"	"	"

Purchases from the Miller Pharmacy (R. 25):

May 2	300	"	"	"
May 4	1,000	"	"	"
June 1	1,400	"	"	"
June 14	1,200	"	"	"
June 19	300	"	"	"
June 20	1,200	"	"	"
June 27	1,200	"	"	"
July 3	1,200	"	"	"
July 7	1,200	"	"	"
July 27	200	"	"	"
August 1	1,200	"	"	"
September 9	1,200	"	"	"

Total: 37,500 ½ grains=18,750 grains=93,750 normal doses (at ⅕ grain per dose).

These figures tally closely with the figures of 35,550 ½-grain tablets as shown by Dr. Boyd's own records (R. 15), and with the 32,700 ½-grain tablets which he finally admitted having purchased. (R. 51.) This is in addition to 802 prescriptions filled by patients during the same period, calling for 25,678 grains more. (R. 52.)

Dr. Boyd's purchases in five months (18,750 grains, or 93,750 normal doses) averaged 3,750 grains, or 18,750 normal doses, per month.

The witness Park testified that 40 ½-grain tablets (50 normal doses) was the average monthly quantity purchased by physicians. (R. 24.) On this basis, Dr. Boyd's requirements were 375 times more than the average.

Dr. Steele testified that 24 ¼-grain tablets (30 normal doses) would last him from 4 to 6 months. (R. 34.) This would be at the rate of about 5 normal doses per month. Dr. Boyd used 3,750 times this amount.

Dr. Williamson testified that 60 grains a year (25 normal doses per month) was a fair average for physicians *who had to administer a large number of hypodermics.* (R. 39.) Dr. Boyd used 750 times this amount. Dr. Williamson added that ten times his figures (600 grains per year, or 250 normal doses per month) " would be as much as could be used *under any conditions.*" Dr. Boyd used 75 times this amount.

Dr. Boyd himself testified that he was not doing a general practice (R. 51), and later stated that: " in the course of the practice of medicine only," he would not use 100 ½-grain tablets in a year.

(R. 58.) He actually did use 900 times that amount.

It is submitted that on the questions of good faith and legitimate practice of the medical profession, these figures are conclusive against the petitioner.

Appendix B

The so-called " ambulatory treatment " has received the official condemnation of the American Medical Association. The following extracts are taken from the report of the Committee on Narcotic Drugs of the Council on Health and Public Instruction of the American Medical Association. (Journal of the American Medical Association, Vol. 76, part 2, No. 24, pages 1669–1771.) This report was rendered in 1921.

* * * * *

Your committee also called on Mr. L. G. Nutt, director of the Narcotic Field Force of the Bureau of Internal Revenue of the Treasury Department, and transmitted to him the opinion of the Council on Health and Public Instruction, to the effect that the medical profession emphatically condemns the practice of distribution of the habit-forming narcotic drugs to addicts, in the course of their treatment for addiction, in such manner that the addicts may administer the drug themselves. Briefly, the so-called ambulatory treatment of addicts was condemned, whether practiced by the private physician, or in a public institution such as the so-called " narcotic clinic," and the director was urged to make use of the full powers of the Internal Revenue Bureau, under the law, to put an end to this practice.

* * * * *

2. The Harrison Law was one of the Acts of Congress, enacted for the purpose of carrying out in

good faith its international treaty obligations under The Hague Convention above named. While technically a tax measure, the purpose and scope of the Harrison Law are such that it is in effect an excellent and desirable means of control by the government of the abuses incident to trade in the habit-forming narcotic drugs. There should be no ambiguity in the interpretation of its requirements by the medical profession, though under cover of the words, "in the course of his professional practice only," some have maintained that exemption is granted to physicians to prescribe or dispense the habit-forming narcotic drugs to addicts, alleging that they were so doing in an attempt to cure addiction; in reality, they were merely maintaining the addict in his customary use of narcotic drugs. Decisions of the courts thus far rendered have uniformly served to strengthen the obvious conclusion that such use of the professional privilege does not constitute proper professional practice.

* * * * *

A State law should embrace recognition of the clear purpose and intent of the Harrison Law, evidenced by the words, "in the course of his professional practice only," to prohibit distribution of narcotic drugs through physicians prescribing or dispensing them to addicts for self-administration, under the guise of administering the so-called "ambulatory reductive method of treatment" (*since such method does not constitute treatment in good faith, nor has it the sanction of professional practice*). Such proper control should be the basis of both state and federal laws. This intent ought to be clearly defined in a state

law, i. e., by definitely prohibiting the " ambulatory treatment " of addiction either by the private physician, or in institutions such as the so-called " narcotic clinic." (Italics ours.)

* * * * *

8. Your committee desires to place on record its firm conviction that any method of treatment for narcotic drug addiction, whether private, institutional, official or governmental, which permits the addicted person to dose himself with the habit-forming narcotic drugs placed in his hands for self-administration, is an unsatisfactory treatment of addiction, begets deception, extends the abuse of habit-forming narcotic drugs, and causes an increase in crime. Therefore your committee recommends that the American Medical Association urge both federal and state governments to exert their full powers and authority to put an end to all manner of such so-called ambulatory methods of treatment of narcotic drug addiction, whether practiced by the private physician or by the so-called " narcotic clinic " or dispensary.

In the opinion of your committee, the only proper and scientific method of treating narcotic drug addiction is under such conditions of control of both the addict and the drug, that any administration of a habit-forming narcotic drug must be by, or under the direct personal authority of the physician, with no chance of any distribution of the drug of addiction to others, or opportunity for the same person to procure any of the drug from any source other than from the physician directly responsible for the addict's treatment.

* * * * *

See also an article by Dr. A. C. Prentice, a member of the Committee which rendered the above report, entitled "The Problem of the Narcotic Drug Addict," in Journal of the American Medical Association, vol. 76, part 2, page 1551 (especially at pages 1552, 1553, and 1555).

○

SUPREME COURT OF THE UNITED STATES.

No. 365.—October Term, 1925.

A. W. Boyd, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[April 19, 1926.]

Mr. Justice Van Devanter delivered the opinion of the Court.

This was a prosecution under the Harrison Anti-Narcotic Act, c. 1, 38 Stat. 785, as amended, c. 18, 40 Stat. 1130. The indictment contained thirteen counts. The defendant was acquitted on seven and convicted on six; and the conviction was affirmed by the Circuit Court of Appeals, 4 F. (2d) 1014. The case is here on writ of certiorari.

In each of the six counts the defendant was described as a physician, registered as such under the Act and credited with paying the special tax required of physicians, and was charged with unlawfully dispensing—through his written prescription—a stated quantity of morphine sulphate to a particular person, in the absence of a written order from the recipient on an authorized form and not in the course of professional practice only, but to enable the recipient to obtain, as actually was done, possession of that quantity of the drug contrary to law. The prescriptions as set forth were: To Annie Davis, an addict to the use of the drug for 21 years, 48 grains on August 2, 48 grains on August 9, and 40 grains on August 13, all in 1923; and to Frank O'Hara, an addict for 18 years, 30 grains on August 18, 30 Grains on August 24, and 30 grains on August 30, all in 1923.

On the trial the government proved and the defendant admitted that he was a physician, was registered under the Act, and had paid the special tax required of a physician; that he issued the prescriptions without written orders from the recipients on an authorized form; that he intended the recipients should obtain the drug

in the quantities specified from a local dealer; that they did so obtain it under the prescriptions; that they had been coming to the defendant for long periods and he knew they were confirmed addicts whose wills had come to be subservient to their acquired craving for the drug; that they were in a position after the prescriptions were filled where they could administer the drug to themselves according to their own inclinations or dispose of it to others; and that each prescription was for a quantity greatly in excess of what would be appropriate for immediate administration.

The disputed question was whether the defendant issued the prescriptions in good faith in the course of his professional practice. On this point the evidence was conflicting. That for the government tended strongly to show that the prescriptions were for quantities many times in excess of what, according to any fair medical standard, reasonably could be put into the possession of confirmed addicts, even when treating them for the addiction or endeavoring to relieve them from suffering incident to it, and that the prescriptions could only have been issued to enable the recipients to indulge their acquired longing for the drug and its effects. Much of that for the defendant tended to show that he issued the prescriptions in good faith in the course of professionally treating the recipients for their addiction and endeavoring to relieve them from its incidents. But some of the evidence in his behalf was pronouncedly corroborative of that for the government. Thus the testimony of other physicians whom he called as witnesses, while tending to approve his asserted method of treatment, also tended to show that the prescriptions in question were grossly excessive and unreasonable according to any fair medical standard. And his personal testimony contained contradictions and admissions tending materially to detract from his claim of good faith. Among other things his testimony showed that he was both distributing and prescribing most unusual quantities of the drug; that he purchased and distributed over 15,000 grains from May 1 to September 30, 1923, and that he issued prescriptions on much the same scale during that period. There was much testimony that his professional and private character were good and widely respected.

In its charge to the jury the court said that the determinative question was whether the defendant issued the prescriptions in

good faith "as a physician to his patients in the course of his professional practice only"; that if they were issued in good faith "for the purpose of curing disease or relieving suffering" he should be acquitted; and that if on the evidence that question was left in reasonable doubt he should be given the benefit of the doubt and acquitted. There was more along this line, in the course of which the court said that it was admissible for the defendant in his professional practice to prescribe the drug either for "the curing of morphinism" or for "the relief of suffering from morphinism" if he did so in good faith, and that in determining the question of his good faith the jury should consider the quantity prescribed—whether it conformed to medical standards, and, if it was in excess of such standards, whether there was reason or occasion for the excess. Thus far the charge was in accord with what this Court said in *Linder* v. *United States,* 268 U. S. 5, where prior decisions were reviewed and explained.

Further on in the charge the court indicated that it was not admissible for the defendant to issue prescriptions to a known addict "for amounts of morphine for a great number of doses, more than was sufficient for the necessity of any one particular administration of it." Complaint is now made of this. It appears ambiguous, and if not taken with the rest of the charge might be regarded as meaning that it never is admissible for a physician in treating an addict to give him a prescription for a greater quantity than is reasonably appropriate for a single dose or administration. So understood the statement would be plainly in conflict with what this Court said in the *Linder* case. But we think it could not well have been so understood in this instance. It did not stand alone, but was to be taken in connection with what preceded it and also with what followed. At the conclusion of the charge counsel for the defendant made no objection and took no exception to it, but simply asked the court to add the following, which was done:

"I am requested to say to you, gentlemen, that in determining whether or not the defendant in prescribing morphine to his patients was honestly seeking to cure them of the morphine habit, while applying his curative remedies, it is not necessary for the jury to believe that defendant's treatment would cure the morphine habit, but it is sufficient if defendant honestly believed his remedy was a cure for this disease."

"I instruct you that if this is true, regardless of whether the course of treatment given by this defendant is a cure, the question

is, was he honestly and in good faith in the course of his professional practice and in an effort to cure disease issuing these prescriptions."

With that addition the charge elicited no criticism or objection from the defendant, although there was full opportunity therefor. It evidently was regarded as consistent and satisfactory. Besides, in view of what was said in other parts of the charge, we are justified in assuming that had the court's attention been particularly drawn at the time to the part complained of now, it would have been put in better form. Certainly after permitting it to pass as satisfactory then the defendant is not now in a position to object to it. *McDermott* v. *Severe,* 202 U. S. 600, 610; *United States* v. *U. S. Fidelity Co.,* 236 U. S. 512, 529; *Norfolk & Western Ry. Co.* v. *Earnest,* 229 U. S. 114, 119-120.

This disposes of the only contention made by the defendant in this Court.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.